Office - Supreme Court, U.S.
FILED
FEB 8 1982
ALEXANDER L. STEVAS,
CLERK

NO. 80-2146

in the Supreme Court of the United States

October Term, 1980

THE STATE OF FLORIDA,
Petitioner,

vs.

MARK ROYER,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Florida

APPENDIX TO BRIEF OF PETITIONER

JIM SMITH
Atttorney General
CALVIN L. FOX
Assistant Attorney General
401 N.W. 2nd Avenue
Suite 820
Miami, Florida 33128
(305) 377-5441

TABLE OF CONTENTS

Page

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL, 95th CONG. 2d SESS., REPORT ON PROBLEMS OF LAW ENFORCEMENT AND ITS EFFORT TO REDUCE THE LEVEL OF DRUGS TRAFFICKING IN SOUTH FLORIDA (comm. Print 1978) i-32

THE MIAMI HERALD,
- January 10, 1980 33
- January 9, 1980 34
- December 27, 1979 35-36
- December 15, 1979 37-40
- December 14, 1979 41-43
- December 13, 1979 44-47
- November 16, 1979 48
- October 13, 1979 51
- September 7, 1979 52
- August 19, 1979 53-56
- July 12, 1979 59-61
- July 8, 1979 62-66
- July 6, 1979 67

United States v. Regan,
D.Ct. Case No. 81-88k, filed June 30, 1981 (D. Mass. 1981) 68

State v. Brant,
Super. Ct. Case No. A5153, opinion filed December 4, 1980 94

[COMMITTEE PRINT]

95TH CONGRESS
2d Session
} HOUSE OF REPRESENTATIVES

PROBLEMS OF LAW ENFORCEMENT AND ITS EFFORT TO REDUCE THE LEVEL OF DRUG TRAFFICKING IN SOUTH FLORIDA

REPORT

OF THE

SELECT COMMITTEE ON NARCOTICS
ABUSE AND CONTROL
NINETY-FIFTH CONGRESS
SECOND SESSION
SCNAC-95-2-5

[EXCERPT]

AUGUST 1978

Printed for the use of the
Select Committee on Narcotics Abuse and Control

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1978

CONTENTS

		Page
I.	Introduction	1-7
	Chart—Enforcement efforts in southeast region since June 9, 1978	[omitted]
II.	Summary of testimony taken in Florida	8-15
III.	Findings	10-20
IV.	Conclusions	21
V.	Recommendations	[omitted]
VI.	Legislative recommendations	[omitted]
	White House memorandum on drug trafficking in the Southeastern United States	22-31
VII.	Postscript	32

I. INTRODUCTION

In the middle of June 1977, at the urging of the ranking minority member of the committee, Congressman J. Herbert Burke, the House Select Committee on Narcotics Abuse and Control began an inquiry into the extent and nature of drug trafficking in south Florida. In the fall of 1977 and again in the spring of 1978, the committee dispatched investigators to the scene in order to obtain up-to-date information on the situation in south Florida regarding individuals and groups principally responsible for the trafficking and Federal, State and local law enforcement responses. The committee investigators reported an overwhelming amount of drug trafficking in marihuana and cocaine from South America, principally Colombia, by every conceivable means of transportation, including trawlers, pleasure boats, cruise ships, aircraft and courier. But the information obtained by the committee's investigators did not adequately prepare the members of the committee who traveled to Florida for hearings on June 9 and 10 for the actual extent of the present drug disaster which these hearings revealed.

Marihuana from Colombia is dispatched by the tonload in all manner of vessels, some foreign flag, some American, destined for south Florida. Seizures of marihuana at the Miami airport had quadrupled over the past 6 months. Almost daily, tons of marihuana and kilos of cocaine were interdicted, yet it is clear from testimony given to the committee that these seizures represent only the tip of the iceberg. Despite dedicated and heroic efforts by Federal, State and local law enforcement personnel, the committee estimates that less than 5 percent of the total contraband coming into

south Florida was seized prior to the committee's hearings. The committee found, among other things, that fortunes were being built on the drug trade; that relatively young persons with no visible means of support were paying huge sums of money, hundreds of thousands of dollars in cash on individual transactions, for pleasure boats, homes and other expensive properties; that the drug trade was so pervasive that many millions of dollars in cash were being diverted by the Federal Reserve System to the Miami district in order to meet the demands of the illicit drug trade. The committee discovered that the total gross dollar value of the drug trade in south Florida was at least $7 billion annually, of which the majority represented sales of marihuana and at least $500 million, sales of cocaine.

Testimony made it clear that illegal drug trafficking had, within the last 2 years, become the largest single commercial activity in the Florida area. Such a situation not only breeds disrespect for the law but also, as a recent Miami Herald editorial put it, "erodes the moral fiber of the community." If the Federal Government were to adopt a mistaken policy of overlooking the smuggling of large quantities of marihuana because of an ill-founded notion that marihuana is not "all that harmful" and is being "decriminalized" by several States, grievous harm could be caused. The smuggling of any contraband, especially in large bulky shipments, cannot be countenanced because if traffickers are left free to smuggle, they will soon be dealing in arms, explosives and other terrorist paraphernalia, as is beginning to be the case now. In the Miami area, drug traders have begun to assume the aura of folk heroes. Ordinary citizens expressed grudging admiration for the cash fortunes which these purveyors muster. In its October

1977 investigations and hearings in Chicago, and in its February 1977 activities in New York City the committee had exposed a similar pervasive drug trade and experienced its disastrous effect on the community. As in Chicago and New York, the committee's exposure to the public of these overwhelming, continuous law violations had an immediate, positive effect. An examination of the following escalation of seizures and arrests in the south Florida area since the committee's hearing began on June 9, 1978 will illustrate the immediate and positive effects of this committee's investigations and hearings.

* * *

Law enforcement responses to this horror were even more disturbing than the actual situation. The manpower, funds and material available to Federal, State and local law enforcement agencies were found to be totally inadequate to deal with the traffic. Only round-the-clock efforts of highly devoted officials made whatever seizures and arrests that were accomplished possible. Moreover, testimony at the hearings suggested that many judges of the Federal and State courts in Florida do not regard drug smuggling as a serious offense. Florida sentences meted out to convicted smugglers are 25 percent more lenient than the national average. Thus arrest and conviction do not now act as a deterrent. Rather it is regarded by most of the smugglers as an acceptable cost of doing business similar to the loss incurred through the confiscation of high cost vehicles, ships and airplanes which are intercepted with contraband aboard.

One of the spectacular ironies of most U.S. Coast Guard seizures on the high seas is that a foreign crew

on a ship holding contraband has not violated any criminal law of the United States. The Coast Guard and U.S. Customs merely interrogates and repatriates crews of such vessels. In the case of Colombian nationals, once repatriated, they are released without prosecution or other deterrent action within 72 hours. The committee engaged in examining all of the Federal statutes that bear upon this problem and will soon recommend to the Committee on the Judiciary amendments that hopefully will close this and other loopholes. In meetings with the State Department subsequent to the hearings, the committee was assured that current efforts are being made to secure prosecutions in Colombia when such crews are returned, under the DEA "JANUS" program.

Despite the committee's most urgent efforts, it is unable to determine how much marihuana, cocaine and heroin enters the United States through Florida. The State of Florida has 8,425 miles of shoreline, and as many as 200 clandestine airstrips in south Florida alone, most of them in remote places in the Everglades and 7,000 daily international travelers enter the Port of Miami through its airports alone.

The report that follows includes findings, conclusions and recommendations based upon the testimony taken by the committee in Hollywood, Fla. on June 9, 10, 1978. The committee will transmit to the appropriate committee of Congress legislative recommendations which will enhance the current Federal enforcement arsenal to alleviate the Florida smuggling problem. Most of these are itemized.

In addition, on June 10, 1978, the committee, comparing the south Florida drug smuggling problem to a national disaster, called for emergency action by the Federal Government to alleviate problems of limited law enforcement resources.

During the course of hearings held in Hollywood, Fla. on June 9 and 10, 1978 a telegram was sent by the committee to the White House, State Department, DEA and Customs to alert them to the disaster situation that the Select Committee had identified related to the smuggling of narcotics through south Florida. The committee asked that immediate and extensive Federal assistance be provided to south Florida law enforcement agencies to stem the flow of narcotics through this region.

[Telegram]

DR. PETER BOURNE–White House.
MATHEA FALCO–Department of State.
Hon. ROBERT CHASEN–Customs.
Hon. PETER B. BENSINGER–DEA.

House Select Committee has just completed extensive investigations and hearings in south Florida. What we have seen and heard convinces us that this area is in the midst of a catastrophic and overwhelming drug disaster. Therefore as in any other natural disaster faced by this nation this situation must be countered by whatever means are necessary and whatever materiel is necessary to cope with this problem. This situation is so serious we must take immediate action to stem the tide of illegal drugs into the United States through south Florida. We therefore request an emergency meeting with you on Tuesday, June 13, for the purpose

of taking immediate emergency steps to assist the dedicated overwhelmed law enforcement services here.

LESTER L. WOLFF, *Chairman,*
J. HERBERT BURKE,
DANIEL AKAKA,
LOUIS FREY,
BENJAMIN GILMAN,
Members of Congress.

Upon return to Washington a meeting was held on June 13, 1978 with the appropriate Federal authorities and Members of Congress to obtain an immediate response to these issues.

* * *

At this meeting the Members requested that an action plan be presented with the sponsorship of the President to reply to the declaration of emergency, which the Select Committee identified in south Florida. The following proposals were set forth by the committee and immediate implementation was promised by the executive agencies:

1. A special White House review board would be established to coordinate all new Federal law enforcement efforts in the area.

2. The implementation of special enforcement task forces to launch Federal agency joint operations including prosecutorial coastline enforcement and intelligence-assistance in this area.

3. Military assistance which would not be in conflict with *posse comitatus* legislation to include materials to

be supplied to law enforcement such as: aircraft, boats and sophisticated electronic surveillance equipment.

4. International assistance which would provide high-level input, particularly justice systems within Colombia, via U.S. Centac investigations, to provide for effective prosecution of Colombian nationals engaged in trafficking and living in Colombia.

5. Additional requests to the Department of Justice which would alleviate the disparity of light sentencing of drug traffickers in the Florida region to be coordinated between the Attorney General and the Governor of Florida. The additional assignment of Customs personnel in Colombia, as well as south Florida, to aid in the analysis of intelligence, this activity to be augmented by additional DEA personnel in Florida and Colombia.

6. Review of current U.S. legislation to control territorial waters and equate drug smuggling with piracy and slavery. This activity to take place in conjunction with new treaty initiatives with foreign countries to allow for expedient seizures of narcotics and smugglers on the high seas.

7. A total review of equipment and manpower currently being utilized in the antinarcotics activities currently in use in the southeast region of the United States.

8. That a full-time Federal narcotics strike force be established in south Florida.

The Federal response was received on July 18, 1978 and is reproduced on page 15 of this report.

II. SUMMARY OF TESTIMONY TAKEN IN FLORIDA

On June 9, the regional director of the Drug Enforcement Administration, the regional director of the Customs Service and the Commandant of the regional Coast Guard station appeared before the committee. The regional director of DEA, Mr. Frederick A. Rody, Jr., stated that "South Florida has become inundated with marihuana and cocaine smuggling and trafficking." Seizures by the Coast Guard, Customs and DEA, in the past 6 months, represent "more drugs than were collectively seized by the U.S. Federal law enforcement community during the entire previous year." Mr. Rody indicated to the committee the dimensions of drug trafficking and the economics associated with the trafficking. He emphasized that the revenue loss to the United States in untaxable income is incalculable. He concluded that the smugglers are better equipped and have more financial resources than the entire drug law enforcement community. There are a number of reasons for this phenomenal increase in drug trafficking in south Florida:

Profits are high and risks disproportionately low in drug smuggling.

There are inadequate deterrents, particularly in the area of bail and sentencing.

The judiciary branch of the Government can give only limited attention to these cases because of heavy dockets.

International agreements on jurisdiction over the high seas are inadequate.

Intelligence gathering and sharing by Federal, State and local drug law enforcement communities continues to be limited.

For reasons of geography and economics south Florida is a natural entry point for contraband from South America.

Mr. Rody testified that recent efforts in interagency intelligence sharing, between Federal and State law enforcement have greatly improved and new intiatives on this level would continue. The linkage of computer intelligence systems (EPIC) with the State enforcement networks of Florida, Georgia and South Carolina as well as combined operations between Coast Guard, Immigration and Customs yield significant results.

Mr. Robert N. Battard of the U.S. Customs Service and Rear Adm. Robert W. Durfey of the U.S. Coast Guard echoed Mr. Rody's sentiments. They reiterated that seizures during the first 4 months of 1978 make it clear that the total tonnage of marihuana and cocaine entering south Florida is steadily increasing and is overwhelming all containment efforts.

The Coast Guard is charged with 10 missions, including law enforcement, on the east coast of the United States, an area of over 1,100 miles. It possesses only 4 cutters and 13 patrol boats to perform its duties. In addition, Customs has eight outdated aircraft and two helicopters. At the time of these hearings, only one rented aircraft was airworthy.

With these limited resources the ability for effective patrol of Florida coastal waterways is virtually impossible. There are basically three routes for drug trafficking from South America, the shortest of which is the windward passage between Cuba and Haiti. The next is the Yucatan Channel between Mexico and Cuba and,

finally, the Mona passage bordered by the Dominican Republic and Puerto Rico. From these routes the smugglers land on either coast of Florida or else, using "mother-ships" they unload their cargo outside the 12-mile limit. There are hundreds of thousands of boats registered in the tri-State area of South Carolina, Georgia, and Florida and over 20 countries through which contraband can be transshipped.

Both Customs and the Coast Guard have done their best to patrol the three major passages and have successfully interdicted a number of "mother-ships." The Coast Guard's ability to board foreign vessels with the approval of the country whose flag the vessel flies helps immeasurably, but smaller vessels are for the most part free to operate without interference.

In response to the jurisdictional problems regarding narcotics smuggling on the high seas the committee has made a number of legislative proposals which appear in the legislative recommendations section of this report.

Sheriff Edward J. Stack of Broward County, Sheriff Richard P. Wille of Palm Beach County, and Chief Leo Callahan of the Fort Lauderdale Police Department made up the second panel on June 9. They also emphasized the enormous advantage the traffickers have over local law enforcement, primarily because the Federal agencies in the south Florida area do not have adequate manpower, or equipment. Any one major conspiracy case will quickly absorb the meager resources of local law enforcement. While cooperation between Federal and local authorities is excellent, the Federal agencies have no means of supplying needed cash, men or material to supplement

local efforts or support local law enforcement groups in court cases.

Seizures by local law enforcement officials with the help of U.S. Customs are impressive but represent only a very small proportion of the total volume of contraband imported into south Florida.

Witnesses on the third panel on June 9 reiterated the emergency nature of the situation. E. Wilson Purdy, director of the Dade County Public Safety Department, emphasized this point in his written statement. Kenneth I. Harms, chief of the Miami police and Sam Martin, chief of the Hollywood police, testified to this effect. These witnesses stressed that to a great extent the interception of thousands of tons of marihuana and the seizure of hundreds of pounds of cocaine is not totally due to the effectiveness of law enforcement, but rather indicates the tremendous volume of traffic which passes through this region. They stressed that the restraints imposed by limited funds are sometimes misconstrued as a lack of cooperation. Cooperation is excellent, but unfortunately is all too frequently directly dependent upon the availability of manpower and money for investigative expenses and equipment.

Chief Harms outlined two major frustrations which he and his colleagues encounter in combating drug trafficking. The first is the necessity of obtaining court authorized wire taps. Second, many indicted smugglers are released on insufficient bail. Of the some 800 fugitives who had left the jurisdiction after posting bond, more than half were under bail of less than $10,000. To ease prosecution of traffickers Chief Martin called for a

State witness protection plan coupled with the impaneling of an investigative grand jury.

The local police chiefs made it clear that the combined efforts of law enforcement alone will never greatly affect trafficking. The United States must deal directly with the source countries, as it did with Mexico, to reduce the vast supplies of exportable contraband. Chief Harms added that preemptive purchase should be considered a legitimate means of taking supplies off the market.

On the morning of June 10, the committee heard from the airport interdiction unit in Dade County, the chief local law enforcement office for the airport group in Broward County and the DEA group supervisor who coordinates these activities. The airport program began operations in May 1977. Divided into three areas of activities, it is aimed at:

1. Identifying airline employees who might be involved in trafficking;

2. Developing intelligence on domestic drug shipments from Miami; and,

3. Identifying couriers.

The investigation of domestic drug shipments made it plain that a package containing drugs could be shipped at the ticket counter of any airline and reach its destination without being inspected. Sergeant Skip Pearson, who is in charge of the Miami airport detail, estimated that female couriers, carrying between 2 and 6 pounds of heroin or cocaine per trip, bring over 100 pounds of

heroin and a much larger quantity of cocaine into Miami monthly.

Customs examines and clears between 6,000 and 7,000 international travelers from approximately 125 aircraft daily. In addition, the Miami International Airport receives more air cargo than any other port of entry in the United States. This volume of passengers, aircraft and cargo overwhelms the available law enforcement efforts. Although seizure figures are large, law enforcers are interdicting only a small percentage of the actual contraband. The committee asked this panel if the testimony presented at this hearing would have a deterrent effect on smugglers. All three witnesses agreed that no one listening to the testimony would be deterred from attempting to smuggle drugs into Florida. On the contrary, the ease with which smugglers bring contraband into south Florida might encourage amateurs to attempt transactions.

The afternoon session of June 10 included Mr. Atlee W. Wampler III, chief of the Miami Organized Crime and Racketeering Strike Force and Mr. Michael P. Sullivan, assistant U.S. attorney in charge of narcotics prosecution in the U.S. attorney's office appeared before the committee. Mr. Wampler noted that his strike force cannot get involved in investigations that are not closely related to an identified organized crime figure or a qualified "criminal group." While the strike force has prosecuted a number of major cases involving traffickers, narcotics is but one of the priorities Washington assigns them. Mr. Wampler testified that no other area of the United States has been inundated with as many identified organized crime individuals as south Florida. He estimated

that there is over 1,000 racketeers living, working, or retired in south Florida, some of whom dominate particular segments of the narcotics importation and distribution business. Their activities also include hidden interests in legitimate businesses, labor unions, banks and legalized gambling operations. In the course of questioning, Mr. Wampler made it plain that the narcotics business supplies the largest volume of cash to organized crime in that area and made several recommendations for legislative action which would assist his operation. These are referred to in the legislative recommendations section of this report.

Mr. Sullivan testified that Florida judges do not impose sufficiently stiff sentences upon convicted narcotics traffickers to deter the thousands of amateurs that are involved in the business. The cases Mr. Sullivan tries for the U.S. attorney involve complex conspiracies and large amounts of money. His office uses undercover agents, reliable informants, and, most importantly, investigative grand juries. With a grand jury, suspects can be questioned under oath, their books and records examined and their sources of income and assets discovered. Immunity to prosecution can be granted those who would not otherwise testify.

Mr. Sullivan outlined two major problems. First, his unit is over-whelmed by the number of cases reaching his office. Secondly, the "lack of specific law to allow prosecutions of crew members on vessels carrying contraband." At the present time, it is permissible to possess drugs on foreign vessels intended for the United States and it is even permissible to possess drugs aboard an American registered vessel, outside the 3-mile zone.

Mr. Sullivan testified to the financial aspects of drug trafficking. Under Federal banking law, the Currency and Foreign Transactions Reporting Act of 1970, any deposit or transfer in excess of $10,000 must be reported to the Internal Revenue Service. However, major traffickers circumvent this requirement by using easily obtainable sources of false identification themselves or giving false identification to a courier making deposits and withdrawals. In addition, money transferred from American banks to offshore depositories, is virtually untraceable. Traffickers utilize sophisticated international banking services in the Bahamas, Panama, and Switzerland where foreign bank secrecy laws protect their illicit profits.

The committee also heard testimony from State Senator George Firestone, former chairman of the Florida Criminal Justice Task Force. Senator Firestone advocated the use of compliance by regulatory agencies of the State to learn the identity of criminals infiltrating legitimate corporations. He proposed a uniform State law making it possible for State officials to obtain lists of officers, directors and employees of corporations for businesses that are being used as fronts and banks through which money is laundered. The use of regulatory information in identifying infiltration of legitimate businesses was stressed by Senator Firestone as a ready means of combating traffickers.

The Florida State Law Enforcement Department allocated 44 special agents to south Florida; approximately one-third of these investigators work on narcotics trafficking. This department also assigns personnel to the Interagency Narcotics Intelligence System (INIS), a five-agency task force which includes DEA and the three local agencies in Miami.

III. FINDINGS

1. All law enforcement authorities agree that south Florida is the major entry port into the United States for marihuana and cocaine smuggling. They estimate that the gross annual dollar volume of the trafficking exceeds $7 billion ($6.5 billion in marihuana and $500 million in cocaine).

2. South Florida is a prime gateway to the entire east coast of the United States. Florida has 8,425 miles of shoreline on its 1,350 miles of coastline and over 260 airstrips, public and private. Miami airport is the fourth largest in the country, receiving up to 7,000 international passengers a day. There is easy access to south Florida by plane or boat from South America. Planes do not have to refuel en route and many of the boats can make the trip in less than a day.

3. The success of the paraquat-spraying program in Mexico has contributed to the problems in south Florida. Untainted Colombian marihuana has now become the choice of the marihuana abuser, and Colombia is now the major supplier of marihuana to the United States. Most of this illegal substance enters through Florida. Efforts to decriminalize marihuana in small quantities for personal use have led to increased demand for marihuana and higher profits for smugglers. In the past few years cocaine has become popular with certain population groups in the United States, and demand for it has jumped. Major shipping patterns have been established from Peru and Bolivia to Colombia and on to the United States through Florida.

4. Drug seizures by U.S. Customs, Coast Guard, DEA, and local law enforcement officials increase each month. Over 2.5 million pounds of marihuana have been seized through May of this fiscal year, compared to less than 950,000 pounds during the same period last year. Seizure of multiton loads is commonplace. The seizure rate is not due, to any great extent, upon law enforcement activities but rather indicates the volume of narcotics entering through Florida. It is estimated that Customs seizes less than 5 percent of the total amount of illicit drugs transshipped through south Florida.

5. Law enforcement agencies, both Federal, State, and local, are handicapped in dealing with the narcotics traffic by severe shortages of manpower and material and financial resources. The Coast Guard is charged with 10 separate missions for an area covering South Carolina, Georgia and Florida—2,100 miles of coastline. In addition, the Coast Guard is also responsible for over 2 million square miles of ocean, including the Caribbean, the Bahamas, and the Greater and Lesser Antilles. To perform its job of narcotics interdiction, search and rescue, marine science activities, port safety and security, aids to navigation, environmental protection, commercial vessel safety and boating safety, the Coast Guard only has 4 medium endurance cutters, 13 patrol boats, 4 air stations and 3,100 people.

6. Customs is also plagued by a shortage of manpower and material for interdicting narcotics. In Broward County, for example, Customs has 11 inspectors to cover 3 airports, Port Everglades and hundreds of marinas. Money that would otherwise be spent for staff and equipment is budgeted for storage of 130 vessels and 22 aircraft which have been confiscated,

but not yet forfeited. Customs lacks sophisticated equipment to match that of the smugglers. The Florida region is assigned eight outdated aircraft and two helicopters, but at the time of the hearings, only one aircraft—a rented one—was airworthy. Customs has no adequate radar or electronic facilities for tracking incoming planes and boats and must depend upon the military for assistance.

7. The Drug Enforcement Administration is extremely understaffed. They have five agents in Colombia where 70 percent of the cocaine traffic originates and nine agents in Miami assigned primarily to airport surveillance.

8. State and local law enforcement officials are not prepared to cope with international narcotics trafficking or its local offshoots. The Florida State Law Enforcement Department allocated 44 special agents to south Florida, approximately one-third of these investigators work on narcotics trafficking. This department also assigns personnel to the Interagency Narcotics Intelligence System, a five-agency task force which includes DEA and the three local agencies in Miami.

9. While cooperation between Federal and local authorities is generally adequate, the Federal agencies have no means of supplying needed money, men or materiel to supplement local efforts or support local law enforcement groups in court cases.

10. Intelligence activities are not sufficiently coordinated. While jurisdictional limits on local law

enforcement authorities compels them to turn over information to higher authorities, there is no reverse exchange. There have been instances of two agencies working independently on the same case.

11. Much of the cocaine smuggled into Florida passes through Miami International Airport. An airport interdiction program which began in May 1977 is constantly overwhelmed by the volume of passengers, aircraft and cargo. While the Ft. Lauderdale airport unit is relatively new, its interdiction rate is mounting steadily.

12. Accompanying the flood of narcotics into Florida, has been an influx of organized crime figures attracted by the enormous profits and minimal risks involved in trafficking.

13. Organized crime activities also include hidden interests in legitimate business covers. Organized crime officials are heavily involved in the service industries in Florida, the labor unions, the construction industry and every conceivable type of private business, particularly those with high cash receipts and low recordkeeping such as restaurants, banks, and legalized gambling operations for the laundering of cash.

14. The Organized Crime and Racketeering Strike Force is limited in its impact on narcotics prosecutions because its jurisdiction includes only cases involving known syndicate members or repeated trafficking patterns. Narcotics is but one of the priorities Washington assigns them. The strike force is also hampered by a lack of manpower. Its members can be tied up for a year or two in pursuing a single case.

15. A major impetus to continued narcotics trafficking in south Florida is the fact that Florida courts, including the U.S. District Courts, set bail and mete out sentences that are about 25 percent more lenient than in the rest of the country. Of the some 800 fugitives who left the jurisdiction after posting bond, more than half were under bail of less than $10,000.

16. The U.S. attorney in south Florida designated a few assistant U.S. attorneys to exclusively prosecute narcotics cases which usually involve complex conspiracies and large amounts of money.

17. There is a loophole in the law which prevents prosecution of persons possessing narcotics on the high seas unless the prosecutor can prove conspiracy to import into the territorial jurisdiction of the United States—a difficult, time-consuming case to develop.

18. It is obvious that the tremendous narcotics trade is adversely affecting the climate for legitimate business in south Florida. There is an enormous flow of cash into the Miami Federal Reserve District, probably as a result of narcotics trafficking. The excess of payments over receipts in Miami showed a 180-percent increase from 1970 to 1974. A chart comparing Miami to districts of the same size such as Cincinnati, Dallas, Houston, and St. Louis, showed that the proportion of payments to receipts in Miami is much higher than normal. Informed opinion is that cash drug transactions account for it.

19. The potential for corruption is self-evident, as traffickers launder their tremendous profits. Under Federal banking law, the Currency and Foreign Transactions Reporting Act of 1970, any deposit or

transfer in excess of $10,000 must be reported to IRS. False identification, courier use and bribery of bank officials help traffickers circumvent this law.

IV. CONCLUSIONS

1. Use of cocaine and marihuana in the United States has soared in the past decade. Cocaine traditionally comes from Latin American narcotics sources which usually involve complex conspiracies and large amounts of money.

2. South Florida has become the gateway to the United States for South American marihuana and cocaine because of geographic proximity.

3. Federal, State, and local law enforcement authorities are not equipped to interdict the tremendous flow of narcotics because their manpower and financial resources have not grown at the same rate as the traffic. DEA, Customs, the U.S. Coast Guard and all other law enforcement authorities are hampered by a lack of equipment, money and resources.

4. Drug traffickers earn enormous profits. They are able to operate with highly sophisticated equipment —jet aircraft, high-powered boats, ingenious container devices—which are far beyond the resources available to American law enforcement authorities.

5. Law enforcement authorities are stymied by a series of loopholes in the U.S. Code and in treaties with South American governments which prevent them from arresting and prosecuting persons possessing narcotics on the high seas.

6. Low bail and light sentences meted out by Florida courts do not deter drug traffickers.

7. Money laundering has become big business in south Florida, encouraging the infiltration of organized crime into legitimate businesses and disrupting the local economy.

8. The acceptance of marihuana as a recreational drug by millions of Americans and the reduction in penalties for its personal use in 11 States makes it more difficult to secure convictions for large scale marihuana smuggling.

9. The Federal Government must react to the situation in south Florida in the manner it would if a natural disaster or other grave emergency had struck the area.

* * *

THE WHITE HOUSE,
Washington, July 18, 1978.

DRUG TRAFFICKING IN THE SOUTHEASTERN UNITED STATES

There is growing concern over the illegal drug trafficking in marihuana and cocaine into and through Florida and other States along the Eastern seaboard and Gulf Coast. Originating in South American and Caribbean countries, huge quantities of marihuana are being smuggled by sea and air into the United States. Statistics indicate that over 2.5 million pounds have been seized through May of this fiscal year compared

to less than 950,000 pounds during the same period last year. Seizure of multi-ton loads is commonplace. The amount of cocaine seized also has increased significantly. Federal, State and local law enforcement agencies and prosecutors in Florida report being overloaded with pending drug cases.

The U.S. economy is directly affected by the hundreds of millions of dollars paid to the sources of the drugs. The financial dealings connected with the illegal drug traffic through South Florida alone are estimated at several billion dollars a year. It is reported that corporations, sponsored by illegal drug profits, have been set up to purchase businesses to provide the mechanism for placing the illegal profits back into legitimate channels. The potential for major expansion of organized crime and for all forms of corruption is obvious.

The Executive Branch, the Congress, and State and local officials have indicated concern over this situation. To provide an effective and timely response, a White House review has been initiated under the direction of Dr. Peter Bourne, Special Assistant to the President. The principal Federal agencies involved (DEA, Customs, Coast Guard, and the State Department) are participating in the review.

The initial intent is to develop a more comprehensive response to this situation which capitalizes on the full capabilities of the Federal, State and local law enforcement authorities. Investigations are targeting on the illegitimate profit associated with the traffic and the effect of these large amounts of money on business and government. There will be a continuing emphasis on seeking longer

term solutions through legislative, judicial and diplomatic initiatives.

The preliminary actions which have been initiated or are planned are based on attacking the entire chain. All Federal capabilities for air and sea surveillance are being reviewed for potential support of the antismuggling effort. The State Department will coordinate with foreign governments. Special joint law enforcement operations are being planned. The Federal agencies will open new offices in areas which are not currently covered. Support of State and local law enforcement will be expanded.

In addition to these initiatives, the President has approved and will submit to the Congress a reorganization proposal which will create a new Border Management Agency to provide more effective inspection upon entry and to strengthen the patrolling activities along the borders. The new Border Management Agency will also be tasked to prepare a comprehensive maritime and air interdiction strategy in cooperation with other Federal agencies.

The following actions have been initiated or are planned in response to the need to stem the growing drug traffic in the Southeastern United States. Legislative needs are included. The White House review team will continue to monitor the situation, coordinate the effort and provide follow-up recommendations.

I. SOURCE AND TRANSIT COUNTRIES

An intensive assessment of the drug sources and traffic routes has been initiated by the interagency

narcotics intelligence committee. This report will address the South American and Central American countries, as well as the Caribbean and will be completed in mid-July.

Customs will conduct an intensified operation in the Virgin Islands in the near future. DEA has scheduled a seminar on conspiracy investigation in October 1978 for law enforcement officials in the Virgin Islands.

A Department of Justice team will travel to Colombia to discuss how Colombian nationals can be prosecuted under Colombian law either in the United States or Colombia if it can be shown directly or indirectly that they possess or have facilitated the possession of huge sums of money, largely using international banking facilities, where the assets can be directly linked with illicit drug trafficking.

The team will also discuss twelve cases where major Colombian traffickers are currently under indictment in the United States or scheduled for indictment in the near future. The Colombian Attorney General has indicated that he will prosecute these violators in Colombia if presented with sufficient evidence.

A proposal is under study which would turn over approximately twelve small ships (previously seized by U.S. authorities) to the Government of the Bahamas for maritime drug enforcement.

A Coast Guard and Customs team visited Colombia in May 1978 to evaluate and develop increased Colombian cooperation in coastal maritime interdiction. As a result of this visit, assistance is being furnished to the

Colombians in developing an effective maritime drug interdiction force and for establishing a mutually beneficial exchange of intelligence information. An orientation visit to the United States by the Commandant of the Colombian Coast Guard is planned for this fall. A Colombian naval officer will accompany a U.S. Coast Guard interdiction patrol in the near future to observe our patrol strategy.

The U.S. delegation to the current General Assembly of the Organization of American States (OAS) is pressing for general recognition of drug trafficking as a hemisphere-wide problem requiring cooperative action by OAS members.

The Colombian Government will be encouraged to take aggressive steps to discourage the growth of marihuana.

II. FLORIDA

DEA, Customs and the Coast Guard will expand their cooperation, coordination, intelligence exchange, and training activities with State and local law enforcement officials in the Florida area. Specific coordination responsibilities will be assigned and an expanded drug training effort will begin in late summer of 1978.

DEA has detailed 15 additional special agents to Florida to assist in handling the heavy case load and to assist in developing conspiracy cases.

DEA will open new offices in Panama City and Ft. Meyers, Florida and increase the permanent staff in Miami.

Customs will open a patrol station in Ft. Meyers and increase staffing at Key West and Ft. Lauderdale. New patrol stations at Crystal River and Ft. Pierce are under consideration.

A Currency Investigation Task Force is being formed in Miami by Customs. This group of investigators will seek to expand upon violations of the Bank Secrecy Act, applying them in concert with other violations of Customs statutes, and laws enforced by Customs. The group will coordinate with the DEA in all violations of the currency laws that involve smuggling or trafficking in narcotics.

The trend toward low bail and low sentencing in South Florida is a significant factor in reducing the deterrent effect of arrest and conviction. An example given was that of 73 defendants released on bond, only eight reappeared to be tried and sentenced, and these eight are now fugitives. The Attorney General has been informed of this problem and asked to take action to encourage more aggressive bail and sentencing policies. Steps are being taken to ensure that adequate information is furnished to the judges so that appropriate bail is set and adequate sentences are meted out.

DEA and the FBI established a joint task force in Miami in October 1977 to investigate the financial aspects of drug trafficking and the use of U.S. banks to facilitate payments for drug shipments. This investigation includes the manner in which illegal drug profits are converted

into apparently legitimate monetary transactions. More arrests are expected as this program continues.

DEA will continue to participate in the Federal/State and local task force in Orlando, Fla.

DEA is finalizing negotiations with the Florida Department of Criminal Law Enforcement regarding the possibility of that agency serving as a statewide clearinghouse for information and an interface with the El Paso Intelligence Center (EPIC) for other non-Federal agencies within the State. DEA is negotiating similar initiatives with Georgia and South Carolina.

III. MARITIME AND AIR

Discussions have begun with DOD to determine the feasibility of increased involvement of U.S. military resources, in conjunction with normal National Defense missions, to assist in surveillance and communications support of Federal law enforcement efforts against drug traffickers penetrating our sea and air borders.

Coast Guard maritime drug interdiction efforts will be increased in proximity to Florida coastal areas, through expanded WPB class vessel patrols, participation of small utility boats in coastal anti-drug activity, and increased surveillance by major surface and air units.

On June 21, the Navy agreed to a Coast Guard request that Navy vessels would report sightings of known or suspected drug smuggling vessels to the Coast Guard. This activity is part of the normal Navy

maritime surveillance and is not to interfere with normal Navy operations.

DEA, Customs and Coast Guard will plan special operations for early fall 1978.

The Coast Guard will continue to support DEA and Customs with available drug interdiction resources, both surface and air.

Customs has been negotiating with DOD to furnish four T-39 jet aircraft for the Customs air interdiction program. While DOD has indicated agreement to the long term loan of these aircraft, it will require at least another 18 months to modify them with suitable radar and sensor equipment. Discussions will be undertaken with DOD to determine if suitably equipped aircraft could be loaned to Customs on a short term basis until the T-39's are modified and available for use.

IV. OTHER ACTIONS

The Attorney General has been asked to give special consideration to requests for LEAA grants which have the potential for significant impact on the drug trafficking originating in or transiting the Caribbean area. Particularly useful would be funding assistance to the Florida Statewide Grand Jury and to other prosecutorial areas. On June 30, the Attorney General announced award of a $360,000 grant in support of a Joint Organized Crime Investigation Program requested by the Dade County Department of Public Safety in Florida.

The Coast Guard is expanding, in coordination with Customs, their PADIE (Prevention and Detection

of Illegal Entry) program. This program was created for National Security purposes to detect and deter smuggling and illegal entry into the United States from the sea. It should help solve one of the major problems—the lack of capability to monitor the vast coastline vulunerable to smuggling operations.

"PADIE" provides an organized way to make use of all agencies, organizations and individuals in reporting any unusual activity taking place along the waterfront or beach. It has significant potential for collection of information on smuggling when coordinated with similar ongoing activities of Customs.

Coordination at the Federal level between the U.S. attorneys and DEA is being increased. In addition, the staff of the U.S. attorneys has been augmented by temporary assignment of three attorneys from the Narcotic and Dangerous Drug Section of the Criminal Division of the Department of Justice, and additional assignments are under consideration. The Executive Office of the U.S. attorneys is reviewing the possible assignment of additional Federal prosecutors to Miami and Puerto Rico.

White House representatives will discuss the proposed initiatives with the Governor of Florida and other officials to ensure that the efforts of the Federal Government and the State government are working in concert to reduce drug traffic into and through their jurisdictions.

The White House review team will continue to monitor, coordinate and follow-up on these initiatives.

V. LEGISLATIVE INITIATIVES

On June 12, 1978, the Department of Justice sent to Congress the "Controlled Substances Seizure and Forfeiture Act of 1978". This proposal would: (1) provide for the forfeiture of proceeds and funds used or intended for use in connection with a violation of the Controlled Substances Act; (2) require the reporting of monetary instruments leaving the United States, or intended to do so; (3) require the prompt reporting of vessels carrying foreign cargo arriving in the United States; and (4) increase the administrative forfeiture amount from $2,500 to $10,000. Early passage of this proposed legislation will greatly facilitate the ability of Federal agencies to attack the economic base supporting the illegal drug traffic.

Current legislation does not allow the arrest of a person on board a U.S. vessel on the high seas or a U.S. citizen on board a foreign vessel on the high seas who is in possession of large amounts of illegal drugs. The administration is currently preparing comments on H.R. 10371, which will amend the Controlled Substances Act. A pending amendment to the Criminal Code Reform (S. 1437) also addresses this issue. The administration will support enactment of legislation to strengthen enforcement activities in this area.

Other proposals are under study.

VII. POSTSCRIPT

The White House in responding to the committee's concern has planned a comprehensive attack on the Southeastern United States drug trade.

The committee has been impressed with the timely and thorough nature of the report submitted by the White House, and looks forward to the significant achievements this plan proposes on both domestic and international fronts.

The committee will continue as its mandate requires to monitor the effectiveness of the Federal enforcement effort. The committee pledges to do everything it can to relieve this problem and to discourage smugglers by tightening law enforcement efforts in Florida to the point that trafficking will no longer be as profitable as it is today.

The committee regards its activities in south Florida as an example of the results that can be obtained where the public is alerted to the problem and such exposure is coupled with prompt and effective action by the executive and legislative branches.

THE MIAMI HERALD Thursday, Jan. 10, 1980

3 of 4 Murder Victims Used Cocaine

Three of the four men left dead in a car along I-95 in North Dade Tuesday had been using cocaine, a deputy Dade County medical examiner said Wednesday.

That finding, the result of blood tests, tended to support police statements that the murder victims had been involved in some kind of narcotics dealings.

Still uncertain was the amount of cocaine the three had ingested. Dr. Donna Brown, in charge of the medical investigation, said an attempt to determine that would be made in further laboratory testing.

* * *

THE MIAMI HERALD Wednesday, Jan. 9, 1980

4 Men Slain, Left in Car; Drug Links Suspected

4 Men Slain, Left in Car Beside I-95

Four men were stabbed and beaten Tuesday morning before their bodies were stuffed into a car that their killers parked on an expressway ramp and tried to set on fire, investigators said.

Metro homicide Detective Steve McElveen said the men seemed to have one thing in common: "Dealing in narcotics."

Their bodies were found at 4:55 a.m. at a ramp of Interstate 95 at Miami Gardens Drive (NW 186th Street), but police don't know where one was shot and all were bound with tape, stabbed, beaten and choked.

There are no suspects.

* * *

THE MIAMI HERALD Thursday, Dec. 27, 1979

Miami's Murder Rate Up 41 Per Cent

Miami's murder rate rose 41 per cent through the first nine months of 1979 over the same period in 1978. Rape jumped 42 per cent, and robbery increased 18 per cent.

Despite the growth in those crimes, the increase over-all in major crime in Miami was not as great as it was in Tampa or St. Petersburg, both of which topped the nationwide 9 per cent over-all increase, according to FBI figures.

Major crimes—murder, forcible rape, robbery, aggravated assault, burglary, larceny and motor-vehicle theft—increased 6 per cent in Miami through September.

There were 95 murders reported in the city of Miami through September. Last year, during that same period, there were 67.

St. Petersburg reported 26 murders in the first nine months of this year, compared to 20 through September 1978. Orlando had nine murders during that period in 1978, and 13 this year.

But in two other Florida cities, the number of murders declined. In Jacksonville, there were 53, five less than in the first nine of 1978. Tampa reported 32 last year, 27 this year.

LOCAL POLICE officials say one reason Miami's murder rate is soaring is the drug wars.

"We've had a large increase in murders due to narcotics," said Miami police spokesman Harry Cunill.

* * *

Reported crime increased at a faster rate in the South than other regions of the country in all of the major-crime categories except larceny.

Saturday, Dec. 15, 1979 THE MIAMI HERALD

IRS Admits Efforts Reduced On Drug-Related Tax Cases

WASHINGTON—The Internal Revenue Service is paying far less attention to drug-related tax cases despite its estimate that drug dealers may gross $40 billion annually, IRS officials admitted Friday.

IRS Commissioner Jerome Kurtz also conceded that during this period there has been a precipitous drop in the number of convictions won by IRS agents against narcotics traffickers who fail to report their incomes.

This decline came during a period when other federal agencies were being overwhelmed by the exploding growth of the illegal drug trade.

These facts emerged Friday during the sixth day of hearings before the Senate Permanent Subcommittee

on Investigations. The subcommittee is looking into the economic impact of the narcotics business and the inability of law enforcement agencies to stem its growth.

Much of the testimony from law enforcement officials and former IRS agents has been critical of the IRS for its alleged unwillingness to cooperate in drug investigations by providing information about suspects' income taxes.

"The problem," Sen. Lawton Chiles (D., Fla.) said angrily during the hearing, "is that the only way to go after [drug profiteers] is to go after their money.

* * *

Kurtz insisted that while the number of agents assigned to drug cases has dropped in five years, the lowest point was reached in 1976. Since then, he said, the IRS has steadily added agents in this area.

He said the IRS is working "very extensively" in Florida to catch drug profiteers.

"I suppose I can't say that we're winning the battle," Kurtz said. "But we're in there fighting it."

Saturday, Dec. 15, 1979 THE MIAMI HERALD

Lawmen to Halt Unsafe Dope Planes

Law enforcement and aviation officials united this week in a concerted effort to ground airplanes that are dangerously modified for long-haul drug runs.

The Federal Aviation Administration, concerned about growing numbers of unsafe airplanes and the crash Sept. 23 of a suspected drug plane into a Miramar house, held a secret meeting Tuesday night with airport operators and representatives of 10 area law enforcement agencies.

* * *

Saturday, Dec. 15, 1979 THE MIAMI HERALD

Miami Cop Charged As Middleman In Marijuana Deal

A city of Miami patrolman acted as a middleman in a 30-pound marijuana deal, according to charges filed by the State Attorney's Office.

Patrolman Orlando Martin, 26, surrendered at the county jail late Thursday after he was charged with possession with intent to sell or deliver marijuana, a felony. Martin, who was relieved of duty Nov. 20, was released on a personal recognizance bond.

Also charged with possessing the marijuana was Rigoberto Varona, 37, of 3081 SW 27th Ave., Miami, according to a charge filed by prosecutor Martin Jaffe.

In a series of telephone conversations and meetings, Martin arranged for confidential informant Jorge Diaz to deliver the 30 pounds of marijuana to Varona, according to an affidavit filed in Circuit Court.

Martin told Diaz that he could settle an argument about a drug rip-off by leaving the marijuana about 2 a.m. Nov. 20 in a car parked near NW Seventh Street and 37th Avenue. The patrolman told Diaz that Varona would take the pot from the car.

Diaz delivered the marijuana, investigators said. At about 2:47 a.m. Nov. 20, while Miami police internal affairs investigators watched, Varona appeared at the parking lot and took the marijuana, they added.

THE MIAMI HERALD Friday, December 14, 1979

Drug Dollars a Hard Habit to Shake

CHARLES
WHITED

Every now and then in this town we catch a glimpse of the monster's tentacles. And we're reminded afresh of a pervasive nemesis that affects, in multiple and silent ways, the lives of us all.

The drug colossus.

It's bad enough for our area to be plastered with a reputation as America's dope-smuggling capital. With $7 billion worth of junk pouring in annually, three-fourths of it through South Florida, the label is certainly appropriate.

IN TERMS of actual drug use, however, only a fraction stops here. The great bulk goes to feed America's raging habit. And today's sophisticated drug distribution system reaches not only the big cities but also every jerkwater town big enough to have a junior high.

So South Florida's drug problem is a national problem.

And those bizarre local side effects of proliferating drug traffic, spawned from mind-boggling profits in loose and spilling cash, are a national problem, too. It just so happens that we're the people who have to live with them.

The corruptive impact of so much cash pouring through a community has got to be enormous. We see only the tip of it. The real depth of it, the breadth of it, the consuming corrosiveness of it, can only be surmised.

But evidence surfaces dramatically at times.

The ongoing trial this week of the Black Tuna Gang, with its recital of alleged plots to bribe jurors and murder a key witness and even the federal judge, is a measure of cynical disregard for law, for order, for life itself. For a gang accused of smuggling $300 million worth of dope, a million to sandbag a trial is pocket change.

LATELY, TOO, have come other revelations that hint at the enormity of drugwork in South Florida.

Isolated cases of police corruption are part of it; but cops on the take are small potatoes, nickel-and-dime casualties in a war of uncertain moralities. The massive, complex pressures on police today are so great that the wonder is so few surrender to opportunity.

After all, who can blame the modestly paid cop for being less than perfect when the banker, that pillar of rectitude and material respectability, looks the other way? Some Miami banks, we're told, are glutted with drug cash. And the bankers know it.

Who can blame the cop, for that matter, when some of our eminent lawyers turn huge fees shielding and defending drug traffickers, knowing damn well where those fees come from? Is justice really that blind?

And then there are those businessmen who get pieces of the drug action, selling at inflated prices such equipment as aircraft and boats for the trade.

Real-estate analyst Charles Kimball said it to a U.S. Senate subcommittee this week. Crime pumped $192 million into Dade and Broward real estate in just six months. Two-thirds of it was drug profit. Result: an added layer of inflation. It boosts the average home cost by $2,000.

So the monster feeds.

In olden days, you killed a monster by chopping off his head.

But first you had to find it.

Thursday, Dec. 13, 1979 THE MIAMI HERALD

3 Find 55 Pounds of Cocaine

Three teenagers on horseback discovered a duffel bag stuffed with about 55 pounds of cocaine, worth an estimated $2 million on the wholesale market, Sunrise police reported Tuesday.

The cocaine probably was part of the same drop of the illegal drug that wound up on the lawn of a Sunrise home last week, police said.

"It has all the earmarks of the drop that happened a week prior," said Capt. Edward DiPaola. "The same quantity, the same duffel bag, the same markings on the bag."

The teenagers found the cocaine Saturday as they were riding horses at the J & W Ranch at NW 17th Street and Flamingo Road, DiPaola said.

The cocoa-brown duffel bag was partially submerged in the marshy waters of the area, he said. The teenagers turned the bag over to the ranch owner, who gave it to police, he said.

On Dec. 3, a duffel bag with a similar amount of cocaine came tumbling from an airplane or helicopter onto a lawn at 2980 NW 120th Way, Sunrise.

THE MIAMI HERALD Thursday, Dec. 13, 1979

Analyst: Drug Cash Sends House Prices Higher

WASHINGTON—The cost of the average home in South Florida is inflated by $2,000 because of a massive infusion of drug-related cash into the regional economy, the Senate Investigations Subcommittee was told this week.

Criminal organizations, operating through foreign front corporations often based in the Netherlands Antilles and Panama, have created this "artificial economy" by pumping an estimated $192 million into Dade and Broward real estate in the first six months of this year, according to the testimony.

"Of this, it is reasonable to presume that at least two-thirds [of $192 million] can be directly attributable to the affluence generated by . . . narcotics," Miami real-estate consultant Charles Kimball told the panel Tuesday.

KIMBALL SAID the willingness of criminal investors to pay above-market prices for real estate has driven prices "sharply upward," especially for luxury condominiums, apartments and shopping centers.

In answer to a question later, he predicted that if the present trend continues for 20 years, these investors will corner the market and own virtually all investment real estate in South Florida.

"The ultimate aim of organized-crime investors is to acquire monopolistic control of various real-estate markets," he said.

Kimball's testimony came during the third day of hearings by the subcommittee into the illicit drug trade. Witnesses Tuesday—including Florida Attorney General Jim Smith and Department of Criminal Law Enforcement chief James York—focused on the boats to cash-paying smugglers at prices "they know to be unreasonable."

Kimball, a columnist for The Herald and real-estate consultant to law-enforcement agencies, said he recently had done a survey of tax-sheltered investment activities.

The purpose of the survey was to determine the amount of money invested in Florida by foreign corporations that were "in some way tainted by criminal activity," he said

Kimball said that of 351 major real-estate purchases by foreign investors in the first six months of this year, 139 were by foreign tax shelters linked to organized crime. Kimball said about 75 per cent—or about $192.1 million—of the investments involved criminals.

When these investments are added to the Florida holdings of known organized-crime figures, $2.5 billion worth of real-estate transactions in the state last year resulted from criminal acivity, Kimball said.

All agreed with U.S. Treasury Department estimates that $7 billion in drug transactions took place last year, making narcotics Florida's major industry, outstripping tourism and agriculture.

"AT WHAT POINT, does this [money] become ingrained into the economy that people aren't willing anymore to participate in law enforcement?" asked Sen. Lawton Chiles of Florida midway through the hearing.

York said that in recent months many legitimate businesses have allowed themselves to become "morally corrupted" by selling such products as aircraft . . .

THE MIAMI HERALD Friday, November 16, 1979

Drugs — Colombia's Indignity

Home of Cocaine Cowboys

Can Colombia Ever Eliminate Drugs?

BARRANQUILLA, Colombia—This country of mountains and jungles and beaches is the home of Miami's Cocaine Cowboys. Colombians call them "mafiosos." They terrorize cafes with magnum revolvers. They fuel inflation and corrupt politicians with the millions they make off cocaine and marijuana.

It may be too late for the government, which finally decided it had enough, to stop them.

For drug smuggling is a bigger-than-ever business: Farmers are growing 70 million pounds of marijuana this year. Smugglers have bought friends in high places. Colombian laws are inadequate to deal with it. And government troops are ill-equipped.

AT STAKE, in the words of Brig. Gen. Jose Villareal, the army field commander against the smugglers, is nothing less than "the national morale, the national dignity."

* * *

Thursday, Nov. 8, 1979 THE MIAMI HERALD

Region Gets 61.2% of Seizures

Miami Still 'Cocaine Capital'

By JOE OGLESBY
Herald Staff Writer

Miami's image as a cocaine mecca remains intact—at least for another year.

U.S. Customs officials reported Wednesday that the Miami region accounted for 61.2 per cent of all the cocaine seized by Customs in the entire country.

A lot of marijuana was seized here too: 70.4 per cent of the nation's total. But that was lower than the 86.9 per cent total the area accounted for in 1977-78.

The Miami region would place even higher if the record keepers had counted two major seizures last month.

Seizures of 329 pounds of cocaine in Fort Lauderdale and 484 pounds in Tampa in late October weren't counted in this year's figures because Customs' fiscal year runs from Oct. 1 to Sept. 30.

"WITH THOSE 713 pounds, maybe things will be downhill from now on," said spokesman Jim Dingfelder.

The 61.2 per cent cocaine seizure for the Miami area represented 857.3 pounds. Nationwide, 1,408.5 pounds of cocaine was taken by Customs.

Confiscated marijuana for the area weighed in at 2,523,737 pounds.

* * *

THE MIAMI HERALD Saturday, October 13, 1979

Largest Cocaine Cache Seized in Car

By ANDERS GYLLENHAAL
Herald Staff Writer

In the biggest cocaine seizure in U.S. history, federal agents Friday found 329 pounds of cocaine in a parked car near Broward's Everglades.

Acting on an informant's tip, U.S. Customs agents found the cocaine stuffed in four duffel bags in a car abandoned just off State Road 84.

The smugglers had fled.

AUTHORITIES said they have suspects and expect to make arrests after an investigation that may take several weeks and lead to a large-scale ring.

If the drug is as pure as initial tests indicate, it has a street value of about $85 million, federal Drug Enforcement Administration (DEA) agents said.

* * *

THE MIAMI HERALD Friday, Sept. 7, 1979

Drug Cash Tied To State Banks

Drug Profits Tied To Cash in Florida

By TOM FIEDLER
And MARTIN MERZER
Herald Staff Writers

Billions of dollars, mostly in $20 and $100 bills, are flowing into Florida banks in patterns that often suggest drug-smuggling profits, federal officials said Thursday.

The Treasury Department, trying to help identify drug smugglers, said it will crack down on the reporting of cash transactions by banks in Florida and elsewhere.

Figures compiled in a Treasury report "clearly indicate that unusually large volumes of currency are flowing into Florida from other states and perhaps from other countries," the department said.

The study found that during 1978 Federal Reserve branches in Miami and Jacksonville had surplus cash deposits of $3.2 billion — a sharp contrast to the experience of other branches in which there was a $10-billion cash deficit.

* * *

THE MIAMI HERALD Sunday, August 19, 1979

CHARLES WHITED

Best Cops Have Reasons to Quit —And They Do

Dave Green grew up in Dade County. Twenty years ago, he became a Metro cop. He worked the past decade in the Organized Crime Bureau, chasing racketeers, illegal gamblers, white-collar hoods.

At age 40, Green was a sergeant. With overtime, he earned around $25,000 a year. A man with so much street savvy, experience and contacts is part of the backbone of any police agency.

Dave Green quit.

FOR STARTERS, the salary doesn't go far when you've got two growing children to provide for and educate.

But even more important, police work has changed.

"Things have gotten to the point where it's hard to function any more," Dave Green said. "I'm fed up with it."

He speaks for a multitude. Today, many experienced officers are quitting in South Florida, or thinking about it, with eight, 10 or 15 years on the job. Cops on vacation are looking for jobs.

There are multiple reasons.

The threat of a Metro tax revolt next month, cutting county funds to the bone, has sapped county police morale. Some 350 police jobs would be erased. There would be numerous budgetary demotions.

Police also are defensive over brutality exposes, public second-guessing of action in the heat of street combat, the firing of Sheriff E. Wilson Purdy.

AT THE CITY of Miami Police Department, American-born white cops with time in service feel blocked from promotion by recent court mandates that blacks and Latins be moved into the upper command.

Stationhouse frustrations over the criminal-justice system range from release of felons on low bonds—or no bonds—to plea bargaining and judicial leniency in white-collar crimes.

Bad guys go free, time after time, on technicalities.

Amid all this, there is the wooing of experienced police by other agencies, both public and private, at better wages. This week's disclosure that Houston, Tex., will hire 50 to 100 additional officers—and is looking to Dade County for applicants—is an example.

Dave Green is among those going into private security work. He talked of his discontents in a lengthy taped interview with Herald Investigations Editor James Savage.

GREEN SEES:

- Crime flourishing in a South Florida that attracts every illegal activity from narcotics to book-making and street assault. "We're a haven for every crud in the United States."

- Street policemen reluctant to move aggressively in confrontations, for fear of being accused of overreacting or brutality. "When police are constantly criticized, the community suffers. You force them [police] to be more careful by doing less.

- The potential for disaster if voters next month do approve the radical cut of Metro taxes. "It scares me to think of what this area will be like. My advice to people will be to move."

"IF YOU LINED them all up from the Courthouse, how far would the line stretch? To Maine?"

And for the police officer there is the never-ending pressure, the donning of the bulletproof vest, the combat mentality, the threat of lawsuit and repercussion. In a way, Green is glad it's over for him.

"It's not worth it. The salary isn't high enough, the danger is too great, the pressures too severe. Whatever you do, you risk being criticized. Every day, you have these problems, these pressures . . . . It's ridiculous for anyone to want to be a police officer. It's a stupid job. If you want excitement, sky-dive."

But then:

"I've loved the job. I never thought I'd live through the whole career.

"Now I wake up every night regretting that I quit."

Thursday, August 9, 1979 THE MIAMI HERALD

'Cocaine Cowboys' Hide Out in Suburbia
'Cowboys' Flashy But Secretive

By EDNA BUCHANAN
Herald Staff Writer

The garages and driveways of their middle- and upper-class multibedroom pool homes are crowded with expensive cars, trucks and motorcycles. But when they want to go somewhere, they call a Yellow Cab.

They pay rents of as much as $1,400 a month, in cash, in advance, yet their housekeeping is a mess.

And if, like one friendly Kendall housewife, you bake a batch of cookies to welcome your new neighbors, chances are they won't open the door.

THEY ARE more interested in cocaine than cookies.

The truck parked in their swank suburban garage is more likely to be an armored war wagon than a station wagon.

They are Colombia's cocaine cowboys and they are hiding out in more than 100 nice houses in nice Dade residential areas with nice neighbors. The neighbors are so nice, they don't call police when they notice the newcomers' peculiarities.

The owners of the houses and the real-estate agents who arrange to lease a client four or five homes at a time don't complain. The profits are too good.

Wednesday, police called it "apathy and greed."

"We've got to get the public's help," Metro Homicide Detective William Bellerdine said.

Police fear the next machine gun shootout—like the one that killed two men and wounded two bystanders at Dadeland last month or the one that sprayed a South Dade intersection with gunfire in April—may be in a nice residential neighborhood and the bystanders may be the neighbors or their children.

* * *

Thursday, July 12, 1979 THE MIAMI HERALD

Dadeland Rocked in Drug War

Killers Spray Dadeland; Two Shoppers Are Killed

Assassins Open Fire In Store

Submachine Guns Used to Kill 2

By EDNA BUCHANAN
Herald Staff Writer

The most violent outburst in South Florida's drug war rocked Dadeland Mall Wednesday afternoon as killers in an armored "war wagon" assassinated two shoppers and wounded two employes in a liquor store, then escaped.

The three gunmen apparently had been stalking their victims. They made no attempt to rob Crown Liquors, at the southwest corner of the busy mall. Both victims and killers were Latin, police said.

Women and children ran for cover as high-powered submachine-gun slugs shattered plate glass, slammed into parked cars and spilled gasoline from riddled fuel tanks into the parking lot.

"It's the cocaine cowboys," one Metro police officer said.

"I have never seen a shootout like this in my life," Assistant Dade County Medical Examiner Charles Diggs said. "This is another Chicago.

"THEY LOOKED like Swiss cheese," Dr. Diggs said. "I started counting bullet holes in one of them—and gave up."

One of the dead men was a Colombian, police said. Their identity was uncertain Wednesday night.

Almost weekly murders and shootouts involving drug-trafficking Colombian nationals have brought unprecedented violence to Dade County this year. Submachinegun battles at busy intersections and at shopping centers had somehow spared bystanders—until Wednesday.

"This is the first time that innocent people have been hurt," Metro Homicide Lt. Robert Willis said. "We've only gone this long by the grace of God."

* * *

Death Machine Drove Killers to the Scene

By EDNA BUCHANAN
Herald Staff Writer

The "war wagon" that carried three killers to Dadeland Mall Wednesday was an efficiently equipped death machine.

The Ford van stunned police who said they wished that they were as well equipped. The van was abandoned with the keys in the ignition, the motor running and the driver's door hanging open.

Armor plate reinforced the sides, the side windows were one-way, wooden dowels converted to gun ports through which shotguns and carbines could be fired.

"They had their own SWAT truck," one astonished officer said.

* * *

THE MIAMI HERALD Sunday, July 8, 1979

Shoot-Out at the Cocaine Corral

Casualty List Grows in S. Florida Drug War

By CARL HIAASEN
And AL MESSERSCHMIDT
Herald Staff Writers

Someone murdered Ruben Echeverria and Julio Gaona, stuffed them in a cardboard box and dumped them in the Everglades.

A nighttime visitor executed importer Bertie Diaz in his Coral Gables office.

Considerate assassins delivered moribund Oscar Alvarez to the emergency room of Baptist Hospital in a new white Cadillac.

Such are the shoot-outs at South Florida's cocaine corral. Killers empty submachineguns in daylight assassinations, chuck well-dressed victims into empty lots and disappear into an invisible underground where Spanish is the idiom, money the motive and cocaine the king.

The Cocaine Wars of '79 have brought unprecedented drug violence to South Florida and unprecedented frustration to South Florida lawmen.

"South of Broward County, we're not in the United States anymore," says Assistant U.S. Attorney Jerry Sanford. "It's Dodge City all over again."

Drug dealers are dying at the rate of more than one a week. Of the 150 murders committed in Dade County in the first half of 1979, at least 35 have been linked by police to the drug trade. The majority of those involve cocaine trafficking.

"It's Murder Inc.," mutters Metro detective Chuck Majors.

"A replay of Chicago in the 1920s," declares Dr. Ronald Wright, deputy medical examiner for Dade County.

Some police blame territorial wars for the violence. Others say the increase in drug murders can be traced to ripoffs between dealers.

On both sides of the crossfire are Colombian nationals entering the country illegally and submerging into the camps of four, possibly five major Colombian coke organizations now operating in South Florida.

Two of the groups are headed by women, one a 27-year-old Colombian whose bodyguard is her sister. Police will not release her name, but they describe her as striking—both physically and literally.

A well-financed underworld pipeline feeds Colombians into the United States in a steady flow.

"If I had a thousand men lined up on the beach holding hands I still couldn't stop them," says William Metcalf, chief investigator for the U.S. Immigration and Naturalization Service (INS).

Armed with silencer-equipped submachineguns, loaded with cash and shielded by multiple identities, the shadow figures of Miami's coke world operate with impunity, police say.

* * *

The Victims of South Florida's Drug Murders

Here is a list of some of the drug-related murders that have made 1979 the bloodiest in South Florida's history:

Jan. 7

An airplane pilot making touch-and-go landings at a South Dade airfield spotted the body of Dario DeJesus Flores, 27, an illegal Colombian alien with a cocaine record in New York. He had been shot in the head and torso with a .38-caliber revolver. Status: Unsolved.

Jan. 9

Shawn Crowder, 38, 4990 NW 79th Ave., ran a paint and body shop, dealt marijuana and Quaaludes, and owed money. Ninety minutes after his girl friend saw him leave his apartment, residents near SW 112th Street and 138th Avenue heard gunfire. Status: Unsolved.

Jan. 12

Carlo Oxemendi, a piano player at The Hasta disco, owed $100. Witnesses said it was a drug debt. His creditor blasted him in the stomach with a shotgun at the restaurant. Oxemendi died two weeks later. His killer, Clobaldo Rafael Sosa, was himself shot in the abdomen over a coke deal at the El Baturro Restaurant. Sosa lingered until Feb. 22. Status: His murderer has not been caught.

Jan. 17

John W. Johnson, 35, took off his clothes and climbed into the bathtub at his apartment at 18200 NW 43rd St. There, his killer shot him in the head. Police say Johnson was a known drug dealer in Coconut Grove. Status: Unsolved.

Jan. 18

Robert E. Johnson, 33, of 2318 W. Fifth Way in Hialeah, got into an argument during the sale of a kilo of cocaine. He was shot to death. Status: Metro homicide detectives have charged a suspect with first-degree murder.

Jan. 18

A target shooter, tramping off Tamiami Trail 26 miles west of Krome Avenue, found a big cardboard box used for shipping a Zenith television set. Inside were 35-year-old Ruben Echeverria and Julio Gaona, 31, both dead of multiple gunshot wounds. Both were identified from Colombian passports. Status: Unsolved.

* * *

THE MIAMI HERALD Friday, July 6, 1979

Langer Wants Out

Langer Says Miami's Drug City

Center Jim Langer, concerned about his family, the educational system, the drug situation and the fans in South Florida, said he'll play for the Dolphins in 1979, but plans to retire from pro football if he can't play for the Minnesota Vikings in 1980.

Currently, Langer has a home in Royalton, Minn., a community of 500 along the Mississippi River in the central part of the state. His children are ages 10, eight, three and six months, and he's concerned about them.

"I don't think living in an area which is No. 1 in the country in importing drugs is a good thing," Langer said by phone from Royalton Thursday. "It breeds a lot of crime. Ultimately, a lot of kids grow up perfectly normal. But that is not the kind of situation I feel comfortable in; I worry about my kids.

"A lot of people are making big money on drugs there. I just don't like the atmosphere. Drugs are too readily available and too lightly taken. This is something I've been considering for a long time."

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CR NO. 81-88-K

UNITED STATES OF AMERICA

v.

JOHN H. REGAN

June 30, 1981
Memorandum

Defendant's Motion to Suppress came on for hearing on June 5, 1981. Evidence was taken on June 5, 8, and 10. The parties elected to rely on their previous written submission and the matter was taken under advisement.

I.

At the hearing defendant called eleven witnesses (one of whom was recalled); the government called two. On the basis of the testimony of these witnesses and the four exhibits, I find as follows:

On March 18, 1981 at about 12:45 p.m., defendant and a male companion entered Delta Airlines Terminal at the Fort Lauderdale Airport. Defendant was on crutches and carried a small dark brown leather bag; the other man carried a larger brown vinyl suitcase. Defendant and companion walked to the Delta ticket-purchase counter, where they assumed a position in a short line.

Defendant aroused the interest of two Broward County Deputy Sheriffs, Thomas Brennan and James Carl, who were conducting narcotics surveillance in the terminal at the time. Except for several minutes when defendant left their sight, Brennan and/or Carl observed defendant from the time he and his companion entered the Delta terminal until defendant boarded his plane; a total period of about 15 minutes. Brennan and Carl had had no prior information concerning defendant, had never seen him before March 18, 1981, and found nothing unusual about defendant's personal appearance or clothing.

Brennan and Carl testified that defendant "kept looking around" and glancing behind him in the line, appeared to be "overly nervous," and that his behavior differed from that of the typical "nervous" airline traveller who tends to focus on the flight information on the television monitors behind the ticket agents. After observing the defendant behaving in an "unusually nervous" manner, deputy Brennan briefly assumed a position in the ticket line about five feet behind defendant. Brennan and Carl observed defendant talking with his companion, who was next to him in line, but did not overhear any of the conversation.

When defendant reached the ticket agent, Brennan overheard defendant give the name "Regan" and request a one-way ticket to Boston. As defendant purchased his ticket, his luggage, consisting of two suitcases, was on the floor next to him. Defendant wrote out baggage identification stickers, which were affixed to the suitcases, and the suitcases were placed on the conveyor belt parallel to the ticket counter and behind the ticket

agents. Both Brennan and Carl testified that while in line defendant "seemed to pay particular attention" to his suitcases.

Once he had obtained his ticket and his suitcases were on the conveyor, defendant and his companion proceeded parallel to the ticket counter and conveyor toward the escalator that leads to the boarding area. As he walked (on crutches), defendant looked several times at his suitcases on the conveyor, appearing to pay "particular attention" to the larger bag, and according to Carl looked backward a couple of times. Before reaching the escalator, defendant and his companion parted, the latter apparently leaving the terminal, and defendant continued up the escalator toward the security gate. At that point, the agents remained downstairs for a short time and lost sight of defendant for two to three minutes. Brennan and Carl estimated that they had observed defendant for five to seven minutes when defendant left their sight.

Deputy Brennan then took a close look at defendant's suitcases, still in view on the conveyor, and made note of the numbers on the baggage claim tickets and the fact that the identification stickers were illegibly written. Both Brennan and Carl then took the escalator upstairs and observed defendant boarding Delta Flight 1002, which left at about 1:00 p.m. The deputies did not observe defendant talk to any other persons or make any detours or telephone calls between the escalator and the time he boarded the flight. Both estimated they observed defendant for four to five minutes in the upstairs concourse area.

After defendant's departure, the deputies went back downstairs to the Delta ticket area. Brennan spoke with the ticket agent who had sold defendant his ticket. Brennan learned that defendant, travelling under (his actual) name "Jack Regan," had paid for his ticket with cash, and that defendant's flight had been scheduled to depart for Boston at about 12:45 p.m., but had been delayed. Also, defendant had given the airline no local telephone number at which he could be reached.

Shortly after defendant's departure, at approximately 1:15 p.m., deputy sheriff Brennan telephoned Drug Enforcement Administration ("DEA") special agent Robert M. Sampson in Boston, and conveyed in substance the above information concerning defendant,[1] and suggested that Sampson conduct further investigation upon defendant's arrival in Boston. Brennan later, "in the next day or so," wrote a report of his observations.

Following the receipt of the information from Ft. Lauderdale Agent Sampson and Special Agent Herbert J. Lemon went to Gate 28 in the Delta Airlines terminal at Boston's Logan Airport. There, at about 3:40 p.m., they observed defendant disembark from Delta Flight 1002. Massachusetts State Police Officer Andrew Palombo was also present. All three were dressed in business suits. Defendant was on crutches, and though not the last was one of the last of the passengers to deplane.

---

[1]The testimony of DEA agents Sampson and Lemon conflicted on when the agents learned from Brennan of defendant's last-minute arrival. I credit Sampson and find that this information was not conveyed until shortly before the hearing, and was not known to the agents on March 18, 1981.

Defendant was met by a woman later identified as Celinda Kaye, who greeted defendant with a kiss.

Upon identifying defendant, Agent Sampson left the other two officers and went to the Delta baggage area. There, after checking with the person in charge of the delta baggage department, Sampson identified and verifed by claim check number the two bags described by Deputy Sheriff Brennan. Sampson noted that the red, white and blue identification stickers were written semi-illegibly. Based on his prior knowledge of defendant's name, Sampson was able to make out the name "Regan."

Defendant and Kaye walked down the concourse leading from the boarding gates to the baggage claim area—a distance of approximately 200 feet. Agent Lemon and trooper Palombo followed them. On three occasions, defendant looked backward over his shoulder. Just prior to their arrival at the Delta baggage area, Kaye departed and defendant halted near one end of the baggage conveyor and remained there, somewhat apart from the other passengers. Agent Sampson emerged from the Delta baggage handling area and rejoined agent Lemon in the baggage claim area. The two observed defendant waiting for his luggage for about ten minutes. During this period, defendant periodically scanned the baggage area, looking from side to side. Defendant removed his two bags from the conveyor, put both crutches under one arm, and proceeded to leave the baggage claim area after presenting two claim checks to the security guard.

As defendant approached the glass doors leading out of the terminal to the street, agent Sampson

approached defendant from the right, presented his DEA "credentials," identified himself as a DEA agent, and asked if defendant would mind speaking with Sampson and agent Lemon for a few minutes. Defendant responded, "sure," apparently turning around so that his back was facing the glass doors. At this point agent Sampson was two to three feet to the right of defendant and Lemon was a similar distance to the left. Trooper Palombo was in the vicinity, but at least ten feet away, and did not join the group.

In response to questions from agent Sampson, defendant stated that he had come from Ft. Lauderdale, that he had been there four days, and that he had been there on a pleasure trip. When Sampson asked if he could see defendant's airplane ticket, defendant reached into his pants pocket, pulled out a number of $10 and $20 bills, and said he must have left his ticket on the plane. Sampson asked defendant for some identification, and defendant produced a Massachusetts driver's license in the name of John H. Regan. Sampson examined the license, handed it to Lemon, and one agent or the other promptly returned the license to defendant. I do not credit defendant's assertion that the agents retained his driver's license continuously until defendant had accompanied them to the DEA office. Nor, however, do I credit the agents' testimony that defendant showed no evidence of sunburn or suntan as a result of his trip to Florida. I credit the testimony of Celinda Kaye, John Ebert, and defendant that defendant's face was suntanned or sunburned.

Defendant then asked what the problem was. Sampson responded that the agents were conducting a

narcotics investigation and asked if defendant had any drugs in his bags. Defendant stated that he had some prescription drugs, unzipped the smaller bag, and produced three prescription bottles. Lemon stated that they were not interested in prescription drugs, but were looking for drugs like cocaine and marijuana. Lemon asked whether there were any drugs in the larger bag. At that point, defendant "became visibly upset" and paled noticeably, and said he had only clothes in the large suitcase. Lemon asked whether the agents could take a look inside the larger bag, and advised defendant that he had the right to refuse. Defendant said he did not want to open the larger bag, and asked what would happen if he refused. Agent Lemon stated that defendant was free to go, but that the agents intended to have the bag examined by a narcotics detector dog. Lemon explained that if the dog "alerted" to the bag, the agents would attempt to secure a warrant to search the bag. Defendant asked if he had to wait while this procedure was performed. The agents advised defendant that he could go, offered to give him a receipt for the bag, which they would detain until the detector dog was available. Defendant said he would leave the bag and take a receipt, and agreed to accompany the agents to the DEA office to obtain a receipt.

At this point, Celinda Kaye arrived in the area, saw defendant with the agents, and attemted to avoid being seen by walking behind two malboxes and a glass display case, away from defendant and the agents. Agent Lemon, joined by trooper Palombo, walked over to Kaye, while Sampson remained with defendant. Lemon and Palombo identified themselves, and asked Kaye if she knew defendant. Kaye answered that she had never seen him before in her life. Agent Lemon informed

Kaye he had seen her greet defendant on his arrival at the airport. She then admitted knowing defendant and that she worked with him. Lemon asked to check Kaye's pocketbook for weapons; Kaye initially refused, but after Lemon insisted, Kaye permitted him to search the purse. The search revealed no weapons. I do not credit Kaye's assertion that Lemon forcibly took the bag from her. However, I do credit Kaye's version (corroborated by an airlines employee) and discredit Lemon's to the extent that she testified this event occurred inside the terminal's glass doors rather than outside at her car. Lemon and Palombo then accompanied Kaye outside to her car, where she produced her license and registration. Palombo at some point radioed in to his office for a check on the license and registration, which disclosed no problems. Kaye was then advised she was free to go, and re-entered the terminal to wait for defendant.

Meanwhile, defendant had accompanied agent Sampson to the DEA office on the third floor of the terminal building. Sampson carried both bags, with defendant's assent. At the DEA office, Sampson learned that the U.S. Customs Service narcotics detector dog was not available until the next day. Sampson again requested defendant's driver's license and wrote down the identifying information appearing thereon, and in response to questions learned that the license no longer bore defendant's current address. Sampson also asked to see the prescription vials again and recorded information appearing on the labels. Sampson gave defendant a handwritten receipt for defendant's large suitcase, and a telephone number to contact regarding the suitcase. Defendant then departed the DEA office,

rejoined Kaye in the baggage area, and left the airport. At some later time that afternoon, a computer "missing and wanted check" was done on defendant, which disclosed nothing of note. The total time that elapsed from the time Lemon and Sampson first approached defendant until he left the DEA office was about 20 minutes.

Later that afternoon, Lemon and Sampson took defendant's suitcase to the Boston DEA office, where it was placed in an evidence vault. The next day, March 19, 1981, Lemon and Sampson removed the suitcase from the vault and took it to the DEA office at Logan Airport, where they met with U.S. Customs Inspector Rick Lefebvre. Customs Service detector dog "Harvey," who had been trained to "alert" to the smell of marijuana, hashish, heroin, and cocaine, was brought to the door of the DEA office. Harvey went directly to defendant's suitcase and "alerted"—*i.e.*, scratched and bit or barked at the bag. On the basis of a four-page affidavit of agent Sampson reciting substantially the above facts, a U.S. Magistrate issued a search warrant. Agent Sampson searched the suitcase and found approximately four and one-half ounces of cocaine.

II.

Defendant's motion to suppress presents several interrelated issues: (1) was the DEA's agents' initial encounter with defendant a "seizure" of defendant's person within the meaning of the Fourth Amendment; (2) if the initial encounter constituted a "seizure," did the agents have a reasonable suspicion that defendant was carrying illegal drugs; (3) was the detention of

defendant's suitcase reasonable under the applicable Fourth Amendment standard?

A.

Was the Initial Encounter a "Seizure"?

Defendant argues that his initial encounter with DEA agents Lemon and Sampson was a "seizure" of his person within the meaning of the Fourth Amendment, that could be justified only by "reasonable suspicion" of criminal activity. The leading case of *Terry v. Ohio*, 392 U.S. 1 (1968), makes clear that not all contacts between police officers and citizens rise to the level of "seizures," implicating Fourth Amendment protections. "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Id.* at 19 n. 16. The standard for determining whether a seizure of the person has occurred is whether, "in view of all the circumstances, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (plurality opinion); *id.* at 560 n. 1 (Powell, J., concurring); *quoted in United States v. West*, No. 80-1727, slip op. at 3 (1st Cir., June 16, 1981). Thus, the test is an objective one. *See United States v. Viegas*, 639 F.2d 42, 44 (1st Cir.), *cert. denied*, 101 S.Ct. 2046 (1981). In applying the "not free to leave" standard, the First Circuit in *West* cited the examples given by Justice Stewart in *Mendenhall* of a "show of authority" sufficient to constitute a seizure:

> the threatening presence of several officers, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.

West, slip op. at 4, *quoting* 446 U.S. at 554.

In *Mendenhall*, an airport "stop" case, two Justices (Stewart and Rehnquist) concluded that the DEA agents' contact with the defendant for questioning was not a "seizure," where the encounter took place in a public concourse, the two agents wore no uniforms and displayed no weapons, the agents approached rather than summoning the defendant, and requested to see her ticket and identification rather than demanding it. 446 U.S. at 555. Three Justices (Burger, C.J., Powell, and Blackmun) did not reach the seizure issue, assumed a seizure had occurred, and concluded that the agents had reasonable grounds for suspicion, sufficient to justify a seizure of the person. 446 U.S. at 565. These three Justices noted that "the question whether the respondent in this case reasonably could have thought she was free to 'walk away' when asked by two Government agents for her driver's license and ticket is extremely close." 446 U.S. at 560 n. 1. The four dissenting Justices agreed that the Court should not have reached the seizure issue not decided below but, assuming a seizure, concluded that the agents lacked sufficient grounds for suspicion. 446 U.S. at 571.

United States v. West involved an airport stop by two officers who approached the defendant in the concourse just after he had passed through the metal

detector. The defendant "responded to [the officers'] questions in a cooperative manner, showing them identification and permitting a search of his boots, but refusing a search of his suitcase," after which defendant "terminated the conversation himself" and left to board his flight. Slip op. at 2. The Court of Appeals, after quoting the "not free to leave" test, stated that "the cases have found a seizure only where the police have engaged in a *'show of authority'* which could be expected to command compliance, beyond simply identifying themselves as police." Slip op. at 3 (emphasis added). The court noted the absence of circumstances such as those quoted from *Mendenhall* above or "any other display of authority by the officers which would indicate a seizure," and that the defendant "in fact, eventually did leave, on his own initiative." On this basis the court affirmed the district court's conclusion that no seizure had occurred.

Another recent First Circuit airport "stop" case with factual parallels to both the present case and *West* did not decide the "seizure" issue because the court held that the agents had sufficient grounds to "seize" the defendant.

United States v. Viegas, 639 F.2d 42, 44 (1st Cir. 1981).

A number of other recent airport drug "stop" cases have assumed, without explicitly deciding, that a seizure of the person had occurred. *See, e.g., Reid v. Georgia*, 448 U.S. 438 (1980) (per curiam); *United States v. Buenaventura-Ariza*, 615 F.2d 29, 31 (2d Cir. 1980). *See also United States v. Wylie*, 569 F.2d 62, 68 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 944 (1978) (holding

initial police contact not a seizure where tone of policeman's inquiry outside bank suggested suspect was free to leave).

The question whether defendant in this case was "seized" upon his initial encounter with agents Lemon and Sampson is a close one. However, taking guidance from *West*, I conclude that defendant's person was not seized; *i.e.*, that a reasonable person under the circumstances would not have "believed that he was not free to leave." Beyond the fact that Lemon and Sampson initially identified themselves as DEA agents, there was no "show of authority" of a type similar to the kinds of intimidating circumstances cited in *Mendenhall* and *West*, *supra*. Here, the two agents, dressed in business suits, approached defendant inside the terminal area as defendant was walking toward the exit doors to the street. No weapons were displayed—just the agents' "credentials" portfolio containing a "pocket commission" and photo-identification. Defendant was not told to stop or the like. When asked if he would speak with the agents he replied, "Sure." Although one agent assumed a position close to defendant on either side, there is no evidence that the agents blocked defendant's path or in any way physically restrained his freedom of movement. There was no touching of defendant's person, or of his luggage at this point.

After a few preliminary questions about the origin, duration, and purpose of defendant's trip, the agents asked to see defendant's airplane ticket (which he did not have) and some identification. The agents examined defendant's driver's license in a cursory manner and promptly returned it. In the course of their questions

concerning illegal drugs, the agents never stated that they suspected defendant was carrying such drugs, nor demanded to examine defendant's luggage. Defendant voluntarily opened his smaller bag and produced prescription vials, which were promptly handed back to him. The agents' request to look inside the larger suitcase was accompanied by the advice that defendant had the right to refuse, which he did. When defendant inquired about the consequences of this refusal, he was explicitly informed that he was free to leave, but the bag was not. Although the latter fact may indicate that defendant was no longer unconditionally free to leave, this circumstance arose only *after*, as discussed *infra*, defendant's behavior during the conversation had given the agents additional grounds for suspicion that defendant possessed illegal drugs.

Nor did the encounter become a "seizure" by virtue of defendant's trip with agent Sampson to the DEA office. As noted *supra*, I discredit defendant's claim that Sampson had retained defendant's driver's license, compelling him to come to the office to reclaim it. I find that, as was held in *Mendenhall*, defendant consented to go to the DEA office. Defendant accompanied Sampson "voluntarily in a spirit of apparent cooperation," *Mendenhall*, 446 U.S. at 557 (opinion of the Court) (joined by five justices), after informing Sampson that he chose to leave the suitcase and to obtain a receipt if the detector dog was not immediately available. There was no coercion. Finally, the facts that Sampson asked defendant a few more "personal history" type questions once in the DEA office, requested again to see defendant's license and prescription bottles, and wrote down certain information do not affect this conclusion. There is no

evidence that this routine and unobtrusive procedure was part of any insidious preconceived plan of Sampson's to detain defendant further. In short, there is no evidence that defendant's cooperation was not freely and voluntarily given.

I find the encounter between defendant and the two DEA agents here to be sufficiently similar to the initial encounter described in *West*—where two officers approached the defendant "after he had passed through the metal detector and started walking down the concourse" and "[h]e responded to their questions in a cooperative manner, showing them identification and permitting a search of his boots, but refusing to permit a search of his suitcase"—to compel the conclusion that no seizure of defendant's person occurred here. Although the defendant in *West* "terminated the conversation himself" and walked away, the fact that defendant did not do the same here does not materially distinguish this case. The test is an objective one—whether a reasonable person would have believed that he was *not* free to leave—not whether a particular defendant in fact exercised that prerogative. The intrusion of the initial encounter was, like that in *Mendenhall*, "quite modest." 446 U.S. at 562-63 (Powell, J., concurring in part). In sum, the evidence here fails to disclose any " 'show of authority' which could be expected to command compliance" or other coercive or intimidating circumstances sufficient to make a reasonable person feel that his liberty was restrained. For these reasons I conclude defendant was not "seized" within the meaning of the Fourth Amendment.

B.

Were There Reasonable Grounds for Suspicion?

Although my conclusion that the encounter between defendant and the DEA agents was not a "seizure" makes decision of the "reasonable suspicion" issue unnecessary, in light of the closeness of the seizure issue it is appropriate to consider whether the agents possessed sufficient information at the time of the initial contact to justify a seizure of defendant.

The Supreme Court in *Reid v. Georgia*, 448 U.S. 438, 440 (1980) (per curiam) stated the prerequisites to a lawful seizure thus: "[A]ny curtailment of a person's liberty by the police must be supported at least by a reasonable and articulable suspicion that the person seized is engaged in criminal activity." *See also State of Michigan v. Summers*, ___ U.S. ___, 49 U.S.L.W. 4776, 4778 (June 22, 1981) ("articulable basis for suspecting criminal activity" required). As recently summarized by the First Circuit in *United States v. Viegas*, 639 F.2d 42, 44-45 (1st Cir. 1981), the "reasonableness" of police action " 'is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests,' " which "in turn, depends upon the officer's ability 'to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion' " (citations omitted). The court stated that "[i]n determining which inferences are rational, due credit must be given to the experience and expertise of the officers," and all of the facts before the agents must be "viewed in their entirety" rather than in isolation. *Id.* at 45.

Defendant relies heavily on *Reid* in support of his argument that agents Lemon and Sampson lacked reasonable suspicion that defendant was engaged in criminal activity. In *Reid*, an airport drug stop case, the DEA agent based his suspicion of the defendant on certain characteristics that fit the "so-called 'drug courier profile' "; specifically:

> that (1) the petitioner had arrived from Fort Lauderdale, which the agent testified is a principal place of origin of cocaine sold elsewhere in this country, (2) the petitioner arrived early in the morning, when law enforcement activity is diminished, (3) he and his companion appeared to the agent to be trying to conceal the fact that they were travelling together, and (4) they apparently had no luggage other than their shoulder bags.

448 U.S. at 441. The Court held

> that the agent could not, as a matter of law, have reasonably suspected the petitioner of criminal activity on the basis of these observed circumstances. Of the evidence relied on, only the fact that the petitioner preceded another person and occasionally looked backward at him as they proceeded through the concourse relates to their particular conduct. The other circumstances described a very large category of presumably innocent travellers, who would be subject to virtually random searches were the Court to conclude that as little foundation as there was in this case could justify a seizure.

Id.

In *United States v. Mendenhall*, 446 U.S. 544 (1980), decided shortly before *Reid*, two of the five Justices who concluded the stop and ensuing search were lawful (Justices Stewart and Rehnquist) did not reach the "reasonable suspicion" question because of their conclusion that no seizure occurred. The three concurring Justices (Chief Justice Burger and Justices Powell and Blackmun) assumed a seizure had occurred and, weighing the "modest" intrusion of the stop against the factors observed by the agents that prompted the stop and the "compelling" public interest in halting drug traffic, concluded that "the agents possessed reasonable and articulate suspicion of criminal activity when they stopped the respondent in a public place and asked her for identification." 446 U.S. at 560-65. This conclusion was based on several factors: the experience and expertise of the DEA agents in detecting probable drug couriers, the agents' observations that the defendant deplaned last, "scanned the entire gate area and walked 'very, very slowly' toward the baggage area," claimed no baggage, changed flights en route, "appeared very nervous," and generally "engaged in behavior that the agents believed was designed to evade detection," typical, of drug couriers. *Id.* at 563-64. The four dissenting Justices also assumed a "seizure," but concluded that "[n]one of the aspects of Ms. Mendenhall's conduct, either alone or in combination, were sufficient to provide reasonable suspicion that she was engaged in criminal activity." 446 U.S. at 572. The dissent stressed the absence of any prior information concerning defendant, the lack of any observed "unusual conduct," and the likelihood of innocent explanations for each factor relied upon by the DEA agents.

The most recent guidance from the First Circuit on what constitutes "reasonable, articulable grounds for suspicion" is the opinion in *United States* v. *Viegas, supra.* In that case the Court, in a two-to-one decision written by Judge Aldrich and joined by Judge Campbell, affirmed the district court's holding that the DEA agents' stop of defendant was based on reasonable suspicion. The observations upon which the DEA agents relied concerning the defendant's arrival at Boston's Logan airport were the following: a man's inquiry into where the bags from a post-midnight flight from Miami, "a recognized cocaine source," would appear; his return to the gate area and entry into a phone booth, where while making an apparent call he kept the booth door open and "was looking up and down the concourse"; his meeting with defendant, without shaking hands, when defendant deplaned from his Miami flight; the two men's entry into adjoining phone booths, with the doors left open, and "peering out of the phone booths, looking up and down the corridor in each direction" in a manner consistent with a drug courier's attempts to identify surveillance; defendant and companion's turning and looking behind them "five or six times" while walking to the baggage area; and their "constantly looking around" while waiting for defendant's luggage. 639 F. 2d at 43. The majority of the panel concluded that "the facts before the agents, viewed in their entirety, adequately justified the initial inquiry," in that "[t]he slight intrusion of the encounter was supported by the pair's evasive actions in the airport, viewed in light of defendant's arrival from a known distribution center." *Id.* at 45. The majority rejected the argument that defendant's actions could be viewed as "consistent with innocent behavior," and stated that "there was considerably greater cause for suspicion here than in *Reid* v. *Georgia*";

in particular defendant's and companion's "frequent glances over their shoulders at no one in particular" (as opposed to Reid's glances at a fellow traveller on the same plane whom he later joined) and their telephone booth actions, both of which "would reasonably suggest attempted detection, and evasion, of surveillance." *Id.* at 45 & n. 5. Judge Bownes, in dissent, concluded that *Reid* controlled because of the "remarkably similar" factors that triggered the stop there, and that "consider[ing] each factor in turn" he found each element of the conduct relied upon "equally consistent with innocent behavior." 639 F.2d at 46-49.

Although the issue is a close one, and the distinctions among *Reid*, *Mendenhall*, and *Viegas* could be considered minimal, I conclude that the instant case is controlled by *Viegas* and that the factors relied upon by agents Lemon and Sampson in stopping defendant were sufficient to constitute "reasonable, articulable grounds for suspicion." Here, the agents relied both upon the information received by telephone from Fort Lauderdale (similarly to the situation in *West*, *supra*) and their own observations of defendant upon his arrival in Boston. The factors articulated by agents Lemon and Sampson at the hearing as being significant in content were the following:

(a) **From Fort Lauderdale.** Agent Sampson had been informed by deputy sheriff Brennan that defendant (1) appeared "unusually" or "extremely" nervous, (2) repeatedly looked backward toward the officers while waiting in the ticket line; (3) paid in cash for a one-way ticket to Boston, and (4) kept looking at the larger suitcase as it moved on the baggage conveyor.

(b) **In Boston.** Agents Sampson and Lemon observed and took into account in addition to the above that defendant: (1) arrived from Fort Lauderdale, a major "source city" for drugs such as cocaine and marijuana, (2) was among the last passengers off the plane, (3) looked backward over his shoulder three times "in a manner consistent with looking for surveillance," as he walked with Kaye down the concourse, despite the fact that he had already met his friend, (4) had written his luggage identification tags illegibly, and (5) "continually" scanned the baggage area while waiting for his luggage. It was only after making these observations that Lemon and Sampson approached and contacted defendant. The agents testified that, although any one of these factors taken in isolation may be insignificant, the totality of these circumstances, viewed in light of their experience in drug courier surveillance,[2] made them sufficiently suspicious to approach defendant to ask questions.

I conclude that, when viewed together through the eyes of an experienced narcotics agent, *see Mendenhall, supra*, 446 U.S. at 563-64 (Powell, J., concurring in part), the above observations constitute "specific and articulable facts which, taken together with rational inferences from those facts," *Terry, supra*, 392 U.S. at 21, are sufficient to surmount the "reasonable suspicion" threshold. In particular, I find significant defendant's repeated looks over his shoulder and scanning behavior, behavior distinctively different from that

---

[2]Special Agent Sampson had been a DEA agent for 15 years, and had been assigned to Logan Airport for one year and nine months. Special Agent Lemon had been a DEA agent for 10½ years, and assigned to Logan Airport for one year and six months.

exhibited by a "typical" nervous, "innocent" air traveller going to and from his or her flight. Like analogous actions in *Viegas*, this behavior by defendant, together with the larger number of factors relied upon here consistent with the so-called "drug courier profile," distinguished this case from *Reid*. As in *Viegas*, defendant's actions here "would reasonably suggest attempted detection, and evasion, of surveillance." *Viegas, supra*, 639 F.2d at 45 n. 5.

Drawing the line between "reasonable and articulable suspicion" and an "inchoate and unparticularized suspicion or 'hunch,'" *Reid, supra*, 448 U.S. at 440-41, in cases such as this, is a difficult task. To be sure, a plausible "innocent" explanation could be offered for each of the above-enumerated factors, and other possible "drug courier profile" characteristics cited in other cases were absent (*e.g.*, one-day "turnaround" trips, checking no luggage, placing phone calls or entering rest rooms, or walking unusually slowly or rapidly through the airport). However, it must be recognized that drug couriers are likely to be sufficiently sophisticated to avoid flagrantly "unusual" or "suspicious" behavior. Subtle and potentially ambiguous cues must necessarily be relied on to a large extent by drug enforcement agents. I conclude that this case is closer to *Viegas* and *Mendenhall* than to *Reid*, and that even if defendant was "seized," on these facts a seizure was justified and did not violate defendant's Fourth Amendment rights.

C.

Finally, defendant contends that the agents lacked sufficient grounds to seize defendant's suitcase, and

that probable cause was required to detain it overnight. Both contentions lack merit.

Terry and its progeny make clear that the "reasonableness" of a particular police action in the Fourth Amendment context is to be determined by weighing the competing individual and governmental interests under the circumstances. The greater the intrusion on an individual's liberty, the greater the quantum of "specific and articulable facts" necessary to justify the intrusion. *See Terry, supra*, 392 U.S. at 21; *Michigan v. Summers, supra*, ___ U.S. ___, 49 U.S.L.W. at 4778 & n. 12; *Delaware v. Prouse*, 440 U.S. 648, 654 (1979); *Mendenhall, supra*, 446 U.S. at 561 (Powell, J., concurring in part); *Viegas, supra*, 639 F.2d at 44.

Temporary detention of luggage for a reasonable period "is governed by the same standard as a temporary detention of the person; *i.e.*, reasonable suspicion." *Viegas, supra*, 639 F.2d at 45; *West, supra*, slip op. at 5-6 ("by the time they detained the suitcase the agents in Boston reasonably suspected West of criminal activity"). Probable cause is not required. *Id.*

Even if a greater degree of "reasonable suspicion" were required to detain defendant's suitcase overnight than was required to detain defendant for questioning (or even assuming the agents did not have "reasonable suspicion" at the initial contact), I conclude that the agents gathered sufficient additional information and observations during their conversation with defendant to justify the detention. *See United States v. Klein*, 626 F.2d 22, 25 (7th Cir. 1980) (additional information gained after initial *Terry* non-seizure "stop," coupled with agents'

previous observations and information telephoned from Florida, sufficient to create reasonable suspicion). Specifically, (1) the DEA agents learned that defendant had left his ticket on the plane (despite the fact that he had retained the baggage claim checks that are routinely stapled thereto); (2) when asked about "drugs," defendant voluntarily opened his small suitcase and produced prescription vials, but refused to open the large suitcase (*cf. U.S. v. West*, 495 F. Supp. 871, 875 (D. Mass. 1980), *aff'd*, slip op., *supra* (significance of consent to search of boots, but not bag, even despite right to refuse search of both)); (3) defendant paled and became "visibly upset" when the agents' attention focused on the large suitcase; and (4) the agents observed Celinda Kaye's evasive behavior upon spotting defendant talking with them.

These additional factors, taken cumulatively with the agents' previous information and observations, provided ample "reasonable suspicion" to detain defendant's suitcase pending a "sniff check" by the narcotics detector dog. Although detention of one's suitcase overnight at the local airport is doubtless an inconvenience and more intrusive than being stopped in a public corridor for brief questioning, the intrusiveness of the procedure in this case was not so great as to require probable cause. The suitcase was held at most 22 hours between the time it was taken from defendant until the time the dog's sniff and "alerting" furnished probable cause for the search that produced the cocaine here at issue. The delay was occasioned by the temporary unavailability of the U.S. Customs Service detector dog and handler. Defendant's home is in the greater Boston area, and he had just returned home, making the degree of incovenience similar to that permitted in *Viegas, supra*, 639 F.2d at 45 (suitcase detained to await

availability of detector dog, defendant departed; inconvenience "less . . . than if he were going away rather than returning home"); and less than that permitted in *West, supra* (suitcase detained in Boston to await dog; defendant flew home to Vermont). The intrusiveness of such a luggage detention upon defendant's "reasonable expectation of privacy . . . in no way compares with an actual search of the contents of the suitcase." *Viegas, supra*, 639 F.2d at 45 (citations omitted). As the court observed in *West*,

> [g]iven the information the agents had at the time they detained the suitcases, . . . and given the lack of effective alternatives available to the agents under the circumstances, and the strong likelihood that [defendant] now fully alerted, would take immediate steps to dispose of any contraband located in the suitcase, the agents' action in detaining the suitcase for investigation was reasonable.

The DEA agents were thus in lawful possession of defendant's suitcase pending further investigation. It is clear that having a suspect's luggage sniffed by a detector dog—now an accepted drug investigation technique—is not a "search" and therefore requires less than probable cause, *e.g., United States v. Sullivan*, 625 F.2d 9, 12-13 (5th Cir. 1980), *cert. denied*, 101 S.Ct. 1374 (1981). The fact that detector dog "Harvey" here "alerted" to defendant's suitcase, together with all of the agents' prior observations, all of which were set forth in agent Sampson's affidavit, provided the necessary probable cause to support the issuance of the warrant and ensuing search of the suitcase.

Defendant's claim that the search warrant was overbroad is without merit. The item to be searched and the things to be seized upon were described with sufficient particularity to satisfy the Fourth Amendment. The inclusion of the phrase "quaaludes, cutting material, and other drug-related paraphernalia," together with "controlled substances, marijuana, cocaine [and] hashish" does not, in this context, make the warrant "fatally general." *Cf. Andresen v. Maryland*, 427 U.S. 463,479 (1976).

/s/ Robert E. Keiton
United States District Judge

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

Indictment No. A-51531

STATE OF GEORGIA

-vs-

DON M. BRANT

ORDER

This court must balance the compelling public interest in law enforcement detecting drug trafficking with the abuse of overzealous agents unreasonably making random "seizures" upon innocent travelers who happen to fall into a necessarily undefined "drug courier profile." While the police, as any other citizen, enjoy the right to ask questions of strangers, to characterize every encounter as a "seizure" would not further any Fourth Amendment constitutionally protected interest. This court has had an opportunity to judge the credibility of both Agent Markonni and the Defendant at the hearing on the Motion to Suppress. The court concludes that there was no "seizure" within the meaning of the Fourth and Fourteenth Amendments when Agent Markonni merely requested permission to speak to the Defendant.

However, there is a close question as to whether or not there was a seizure upon the taking of the Defendant's airline ticket. See, n. 1 (Stewart, J., concurring) and n. 2 (White, J., dissenting) in United States v.

Mendenhall, ____ U.S. ____, 64 L.Ed 2 497 (1980). The facts in the instant case are strikingly similar to the recent Court of Appeals decision in McShan v. State, ____ Ga. App. ____ (1980), wherein that court addresses the *Mendenhall* decision, and concludes, based upon the factors considered in *Mendenhall* that there was no illegal seizure. Here, as in *Mendenhall*, the events took place in the public concourse of a busy international airport. The agent wore no uniform and displayed no weapons. The agent did not summon the Defendant to his presence, but instead approached him and identified himself as a federal agent. The agent requested but did not demand to see Defendant's identification. Although the testimony is somewhat conflicting, the Defendant at the suppression hearing stated that he did not see the agent's gun; that the agent was "polite, but firm" in talking to him, and that the agent was wearing casual clothes. in *Mendenhall*, the Defendant was a young black female who had not yet graduated high school, who was confronted by two white male officers. Here we have a 28 year old white male who is confronted by only one white male officer.

In *Mendenhall* the agents returned the boarding pass to the Defendant and there seems to be a dispute about the majority opinion in *Mendenhall* as to whether or not the Court should have even reached the seizure issue, for apparently it may not have been properly raised. This court finds, however, that Agent Markonni possessed specific and articulable standards to justify such an intrusion on the Defendant's Fourt Amendment rights. Here it is quite significant, as the agent testified, that besides the general characteristics of the drug carrier, such as little baggage, coming from a distribution

center of narcotics such as Miami, the agent also discovered that the Defendant was on a one-way ticket, that the Defendant paid cash and that the name on the ticket was "B. Donald." It is also undisputed that the agent saw and heard the Defendant place a telephone call immediately upon deplaning. The agent unequivocably testified that he heard the name "Bruce Powell" used by the Defendant on making a collect phone call. The Defendant left the telephone booth, whereupon the agent secured the call-back number from Delta requesting a Mr. Donald or Bruce Powell. The person answering denied knowing either person. These factors, coupled with the fact that the agent in this case not only initiated the Atlanta program in terms of trying to deter drug trafficking at airports, but also started the same drug enforcement procedures in the Detroit airport, which conicidentlly is where the *Mendenhall* case derived from. These factors, particularly the agent discovering that the Defendant used a fictitious name, distinguishes this case from Reid vs. Georgia, __ U.S. __ (1980), and gives rise to the agent having a reasonable and articulable suspicion of the Defendant. Accordingly, although this court has previously found that a seizure did not take place under the *McShan* and *Mendenhall* majority opinions, even were it assumed a seizure did occur when the agent obtained possession of the Defendant's ticket, there being reasonable suspicion of the Defendant's wrongdoing, the court concludes that there was no Fourth Amendment violation under either analysis. What makes this case even stronger for the state is the fact that upon considering the testimony of the agent and the Defendant, it seems clear that the Defendant willingly gave the airline ticket to the agent. Thus this court holds that Defendant consented to the giving of his airline ticket, which would negate the requirement

for reasonable suspicion. It was only after the agent requested the Defendant's airline ticket that he asked the Defendant what his name was, to which the Defendant replied, "Bruce Donald." The Defendant initially denied possessing any identification; however, upon a subsequent request for identification, the Defendant gave the agent his license and an explanation for using a different name. At that point, the agent arrested the Defendant for violating the Georgia false name statute.

The authority cited by the Defendant's counsel for the agent improperly arresting the Defendant for violation of the Georgia false name statute does not dispute the thrust of Ga. Code Ann. §24-2811, wherein the sheriff of a local county has it within his discretion to appoint a deputy. Nor does Defendant's authority show any improper purpose by such an appointment so as to infringe upon the Tenth Amendment. See United States v. Polvano, CR. NO. 79-11-7 A (Magistrate's report and recommendation) Defendant also argues that statements made by him to the agent should be suppressed due to the failure of the agent to provide the Fifth Amendment warnings. The U.S. Supreme Court decision in *Mendenhall* specifically addressed this issue that Miranda warnings were not required for general on-the-scene questioning. Accordingly, it would not be a violation of the Fifth

Amendment. See United States v. Mendenhall, *supra* at 510.

Accordingly, the Motion to Suppress is denied.

AND IT IS SO ORDERED.

This 4th day of December, 1980.

/s/ Luther Alverson
Luther Alverson
Judge, Superior Court
Atlanta Judicial Circuit